2 September 2021

Her Majesty's Treasury
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London
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Submitted by email: SecuritisationReview@hmtreasury.gov.uk

Re: Review of the Securitisation Regulation: Call for evidence

On behalf of the Association for Financial Markets in Europe ("**AFME**")[1], UK Finance[2] (together with AFME, the "**Joint Associations**") and their members, we welcome the opportunity to respond to Review of the Securitisation Regulation: Call for evidence (the "**CfE**") published by Her Majesty's Treasury ("**HMT**") and dated June 2021.

Members of the Joint Associations share the Chancellor's and HMT's goals to use the UK's exit from the EU and this review to "ensure its regulatory approach for financial services is tailored to UK markets, whilst remaining committed to the highest international standards of regulation". In particular, we have been encouraged by the emphasis in the CfE on the role of the Future Regulatory Framework (FRF) exercise and its focus on how to adapt the UK's financial services regulatory framework to our position outside the EU and ensure it is fit for the future. Outside the EU, the UK now has the independence and flexibility to address aspects of the securitisation regulatory framework in order to enhance market depth and liquidity while not damaging product safety or robustness. We also note that, after HMT issued the CfE, the EU issued its own "Targeted consultation on the functioning of the EU framework" (the "EU Consultation") under Article 46 of the EU Sec Reg, and has confirmed its commitment to securitisation as a key pillar of EU Capital Markets Union.

In this response we will make some general comments and then address each question posed in the CfE specifically. We also attach as Appendix 1 a presentation prepared by AFME entitled "Securitisation as a key pillar of the UK Future Regulatory Framework" to which we will refer, and which contains further detail and data which support our answers.

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[1] AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia. AFME is listed on the EU Register of Interest Representatives, registration number 6511006398676.

[2] UK Finance is the collective voice for the banking and finance industry. Representing more than 250 firms, we act to enhance competitiveness, support customers and facilitate innovation.

General comments

Scope of the CfE

In the CfE, HMT has tracked closely the topics listed for assessment in Article 46 of the Sec Reg. However, we do note that in the EU Consultation the European Commission does seek feedback "on a number of additional issues that have been identified and raised by stakeholders and by the Joint Committee of ESAs as having an impact on the functioning of the securitisation framework". Specifically, these additional issues include the treatment of securitisation under associated capital and liquidity rules for both banks and insurance companies, under the CRR and Solvency II respectively (the "Associated Prudential Rules").

The Associated Prudential Rules are critical to the future growth of the market. To achieve the right framework for securitisation for the UK it is therefore necessary to assess not just the specific issues outlined in Article 46 of the Sec Reg but also the Associated Prudential Rules. In many ways the securitisation framework, both in the EU and now separately in the UK, remains a job half done: while the framework for "simple, transparent and standardised" or "STS" securitisation is widely regarded as a global "gold standard", its high quality has not been recognised in the Associated Prudential Rules. In some cases, for example the LCR, the post-STS treatment of securitisation overall is actually worse than before STS was introduced.

We have therefore commented widely on the Associated Prudential Rules in our detailed response below, and considerable detail on AFME's position is provided in Appendix 1.

The framework for STS securitisation (the "STS Framework") has not been transformative

This has been in place only since 1 January 2019, and even then significant secondary legislation was missing (some still is) such that the first UK STS securitisation did not take place until April of that year. Just under a year later the TFSME was extended (11 March 2020) and the COVID-19 pandemic began to meaningfully affect the UK, both of which interrupted the development of the market.

While it is difficult to untangle these different factors, the consensus of market participants is that the impact of the STS Framework has been disappointing – though not entirely surprising.

While there has been frequent use of the STS label, much of it has been applying the label to existing transactions. For issuers, the STS requirements remain burdensome. For investors, the more sophisticated do not need (nor have they ever needed) the STS label other than as an additional check which they regard as interesting but not essential; the less sophisticated face the same due diligence obligations and credit work which they prefer to deploy for higher-yielding non-STS transactions and regulated investors face capital disincentives compared with other fixed income products, even after the lower charges for STS (as compared to non-STS securitisations) are taken into account.

For further detail on the market, including a comparison of STS versus non-STS issuance, see Section 3 of Appendix 1.

The Basel context

The Basel framework for securitisation (the "**Basel Securitisation Framework**") was finalised in December 2014, in very different circumstances from those which prevail today. The Basel Securitisation Framework was, understandably, heavily influenced by the experience of the Global Financial Crisis ("**GFC**") and in particular the role played by US sub-prime mortgages. It establishes a highly conservative approach to securitisation. Yet securitisation in the EU (and the UK) has always performed strongly, both through and since the GFC (see Section 3 (especially pages 45-49) of Appendix 1 and Fitch Ratings: "Global Structured Finance Losses: 2000-2020 Issuance", March 2021 (the "**Fitch Report**")). Credit losses have been minimal and where they have occurred have been confined to defined asset classes such as commercial mortgage-backed securities ("**CMBS**") and CDOs, both of which typically have features which preclude them from qualifying as STS securitisations. So arguably the Basel Framework was always too conservative an approach for the needs of the EU and the UK.

The Basel Securitisation Framework was implemented in the EU (at the time including the UK) through amendments to the CRR implemented at the same time as the EU Sec Reg. It has not been implemented in the United States and their securitisation market has expanded significantly since then.

Since then, further rules from Basel have created further regulatory hurdles which make securitisation more expensive for originators, including most recently the "output floor". The output floor has a disproportionate effect on the treatment of securitisation by a bank originator, by significantly increasing the capital required to be held against any retained exposures after securitisation. For a detailed analysis of this see pages 65-70 of Section 5 of Appendix 1. This is problematic because, to be cost-effective, the *capital-adjusted* cost of funding securitisation for a bank originator must be cheaper than for funding the assets on the balance sheet. Securitisation will always be a more complex and (in terms of the "headline" weighted average cost of funding) more expensive than other fixed income instruments; as we explain in Appendix 1 (pages 9-16), the unique feature of securitisation is that *it enables banks to transfer risk while still continuing to lend*.

The very harsh treatment which the output floor imposes on retained exposures post-securitisation creates a very high hurdle, and makes it very difficult for a bank originator to achieve an attractive *capital-adjusted* cost of funds for securitisation. This depresses issuance by larger banks, has led to market shrinkage and reduces the opportunities available for banks to manage and disperse their risks.

We understand that when the output floor was being discussed at Basel there was no consideration of its effect on securitisation. The cumulative effect described above therefore needs now to be considered, in order to ensure that all banks that are engaged in UK securitisation markets can expand their capacity to serve the UK market and the UK's role as a global financial centre.

The legislative process

The securitisation framework has of course been created by primary legislation under the EU legislative process. While primary legislation is appropriate for setting out broad, general principles, it can have significant downsides when, as often happens, important technical issues are sacrificed to political compromises, damaging clarity and coherence, and leading to a final text which market participants can struggle to implement or which can reduce market depth and liquidity.

The UK can now legislate for itself more freely and more flexibly. One way in which we believe the FRF exercise might be used to support the objectives set out at the beginning of this response would be by significantly transferring detailed regulation of securitisation currently contained in *primary* legislation to the relevant regulators' handbooks. We stress we are not asking for wholesale removal of existing legal requirements; rather for their transfer to secondary legislation.

This would facilitate a more flexible, adaptable set of regulations that is more able to meet the needs of a constantly evolving market without sacrificing prudence or accountability. It would be more easily capable of amendment as markets evolve, and would make it easier to address shortcomings and oversights in this highly technical and specialised field. Appropriate and effective sanctions for breach would remain available to relevant regulators.

<u>Market access</u>

Another broad thematic challenge that needs to be addressed in the context of EU exit is that of market access. Consideration will need to be given to the fact that most publicly-placed UK securitisations will require access to EU investors, US investors or both, to say nothing of significant investors in other regions, including APAC. The result is that public securitisations, even where the sell-side entities are entirely based in the UK, will often need to consider and (to some degree) comply with the requirements of those other jurisdictions.

That is not to say that the UK should necessarily seek alignment in all areas with the rules in those jurisdictions, but considerable weight should be attached to the interoperability of the regimes such that UK entities seeking access to investors in other markets will not have unnecessary burdens imposed on them by having to comply with multiple regulatory regimes.

Likewise, UK investors seeking to invest in third country securitisations need mirroring flexibility of their own. In some cases (e.g. due diligence requirements) this could be achieved by a proportionality doctrine (see answer to Question 5). In others (e.g. risk retention) burdens can be minimised by broad substantive alignment, even where the specific rules are not exactly the same (see answer to Question 15). In yet other circumstances (e.g. STS treatment), a system of mutual recognition and equivalence might be most appropriate (see answers to Questions 29 and 30). The broader point is that consideration of the rules in the UK cannot be done in a vacuum, because the reality of operating in a global capital market is that UK market participants will frequently have to consider third countries' regulations (mainly those of the EU and US) even where those regulations do not directly apply to them.

<u>Public and private transactions</u>

People not familiar with it sometimes think of the Sec Reg as applying only to bonds that are in some way “public”, even if they do not meet the test for being “public” in Article 7(2) of the Sec Reg. This is not the case.

Because of the wide definition of "securitisation" in the Sec Reg, it applies to a diverse set of financial arrangements which tranche underlying credit risk in an ongoing way. Bilateral trade receivables arrangements, syndicated loans, private bonds and a number of other instruments are therefore frequently caught by the definition and subject to the Sec Reg accordingly (even though some of these structures may not conventionally be considered to be securitisations by market participants). A number of these instruments are used where issuers are not ready for public markets issuance, for example, because they are too small, they have not had sufficient time in business to collect sufficient data or assets, the asset class is otherwise not suitable for the public markets or the issuer has legitimate privacy or commercial confidentiality concerns.

That said, private securitisations have substantial societal benefits and should be encouraged where they can be done prudently, rather than being burdened by the need to comply with a level and type of regulation that is not always appropriate to the risks involved or the sophistication of the parties taking those risks. Private securitisations play important roles, like providing funding to non-bank financial institutions ("**NBFI**") – who in turn finance the real economy – and enabling bank de-leveraging by funding buyers of loan portfolios, thereby delivering capital into the real economy.

Therefore, in its consideration of the Sec Reg rules, members of the Joint Associations would urge HMT to do what it can to responsibly facilitate these transactions so that they are available as a funding tool for issuers who do not have access to public markets. By increasing the number of originators who have access to securitisation as a tool, we believe that it will be possible to ultimately increase the pipeline to the public securitisation markets and thereby increase the number of investors attracted to the market, in turn increasing liquidity and reducing volatility. Some suggestions for how to facilitate this are included in the answer to Question 23, but the overarching point is a broad one, and is one of the main reasons flexibility and proportionality in the securitisation regulatory framework are so badly needed going forward.

<u>Answers to HMT's specific questions in the CfE</u>

1. ***What are your considerations for investing in an STS versus non-STS securitisation?***

   Securitisations generally speaking offer investors the opportunity to take exposure to defined underlying credit risks with a choice of risk appetite from AAA senior risk to (typically) A/BBB mezzanine risk and BB or lower or unrated subordinated or first loss risk. Compared with other fixed income instruments of equivalent rating, yields on securitisations are typically higher; this reflects inter alia the structured nature of the instrument and the need to bring specialised credit skills to its assessment. Securitisations can also offer investors a way to gain exposure to a defined business or sector of the economy (for example, residential housing) without using up (too much) credit limits for the relevant originator (for example, the lending bank).

   As for STS versus non-STS securitisations, members of the Joint Associations who invest in securitisations view this choice as turning mainly on bank capital charges and LCR eligibility. For bank treasury investors, who comprise about one-third of the investor market for AAA senior securitisation tranches, STS investments are more attractive because they are more capital efficient and can be eligible as Level 2B HQLA under the LCR (although this treatment remains relatively harsh – see Appendix 1, page 63). That said, some bank treasuries also have non-STS "buckets" to be able to invest in the comparatively better supplied non-STS market (see page 52 of Appendix 1 for relative STS/non-STS issuance since 2019).

When lending in the private markets such as warehousing[3], STS status can influence costs/returns for bank lenders (who would be institutional investors under a Sec Reg analysis of such arrangements) and therefore the cost of credit for their borrowers. There are also STS benefits for a liquidity provider (typically the same entity as the sponsor) to an asset-backed commercial paper ("ABCP") programme.

For insurance company investors, insurers are not natural buyers of senior tranches as their need for yield and tenor is not met at this level of credit risk. Mezzanine and subordinated exposures are a better fit, but unfortunately the very harsh risk factors applied under the Solvency II regime for mezzanine and subordinated risk (as well as other distortions) discourage any meaningful engagement by insurers in today's securitisation market.

For non-bank, non-insurer investors in the securitisation markets, we are not aware of any evidence that STS status or lack thereof in a transaction is a material factor in investment decisions. We also have not seen any evidence that the introduction of STS has led to a material increase in the numbers of active investors in the securitisation markets.

There is some evidence that the drafting of Article 5(3)(c) of the Sec Reg adds unhelpful compliance costs for investors who may invest in an STS securitisation without relying on its STS status (e.g. because they are not concerned about the bank capital, LCR or insurance capital benefits of STS), but are nonetheless required to include STS compliance in the scope of the due diligence conducted. HMT could usefully make clear that the requirement to diligence STS compliance applies only where the particular investor is relying on the STS status of the transaction (e.g. by choosing to apply STS capital weighting, use the securitisation investment as part of an LCR bucket, etc.).

2. ***What impact, if any, has the Sec Reg had on your investment decisions for investing in a securitisation position, and why?***

As stated above under our general comments, in many ways the securitisation framework remains a job half done: while the framework for "simple, transparent and standardised" or "STS" securitisation is widely regarded as a global "gold standard", its high quality has not been recognised appropriately in the Associated Prudential Rules. In some cases, for example the LCR, the post-STS treatment of securitisation overall is actually worse than before STS was introduced.

We appreciate the Associated Capital Rules are not part of the Sec Reg, but we interpret this question broadly because it is not possible to separate investment decisions from the capital and liquidity considerations.

[3] "Warehousing" is where a bank provides funding to an originator to enable it to build up a portfolio of assets (for example, residential mortgages) with a view to eventual securitisation once the portfolio reaches a feasible size. The warehouse lending which is repaid through securitisation may then be made available again for further origination, and so on.

For a detailed analysis of where bank and insurer capital and liquidity rules remain disproportionately harsh for securitisation, see Section 5 of Appendix 1.

The Associated Prudential Rules have, however, also included options in terms of the hierarchy of approaches that has provided some improved flexibility in terms of booking approach and capital optimisation more generally.

3. ***What changes to the Sec Reg would encourage you to invest more in securitisations of SME exposures?***

SME loans are not the easiest of asset classes to securitise in cash securitisation transactions. For banks, they are less efficient for funding purposes relative to other funding options, a state of affairs which is especially pronounced as a result of the lower funding needs remaining following TFSME and its predecessors. From a due diligence perspective, the documents are generally more heterogeneous, which makes cash transactions very costly from a documentary diligence perspective. Further, the credit profile of a pool of SME loans can be diverse, risky (in the sense that the underlying debtor SMEs are small companies), typically less granular than, say, residential mortgages or consumer loans, often revolving in their nature to reflect the ebb and flow of the underlying business, and sometimes linked in a banking relationship to other facilities such as swaps or foreign exchange.

On the other hand, for bank originators, SME and other mid market and large corporate loans are typically more efficient in terms of the cost/benefits of significant risk transfer due to their relatively higher RWA densities when held on the balance sheet. This is extremely valuable both from the perspective of active management of balance sheets and relevant portfolios, but also feeds into stress testing and recovery/resolution options and has a role to play in banking system stability.

These factors have led to the market for securitisations of SME and other corporate loans being predominantly a synthetic (or "on balance sheet" or "OBS") securitisation market and consequently we believe that HMT should focus on fostering appropriate conditions to allow this market to develop positively to allow the market to support appropriate risk sharing and distribution – namely in terms of, STS for synthetic transactions, RWA calibration, and the SRT approval process by the PRA (acknowledging that the latter two are mainly in the purview of the PRA, rather than being direct HMT responsibilities). In synthetic securitisation, because the underlying assets are not sold to a SSPE but remain on the originator's balance sheet, where credit protection is bought for them, it is not necessary to track cashflows precisely (which is necessary in a cash securitisation). This removes some of the difficulties outlined in the first paragraph above. The credit protection, properly structured and once SRT approval is given by the appropriate regulator, enables the originator to transfer the risk and free up capital, achieving the same effect as a cash securitisation with risk transfer. In March 2021 the CMRP in the EU established a framework for STS for OBS securitisations, but this did not happen in time to be "onshored" to the UK. A similar framework established in the UK would, we believe, increase the flow of OBS securitisations of SME loans although, with the capital benefits falling on the originator (who retains the senior tranche) rather than the investor, the benefit to the investor would be indirect in the form of increased deal flow.

The more detailed answers to this question are best examined by looking separately at private and public transactions.

Private transactions

The main change in the Sec Reg that could facilitate this would be relaxation of disclosure requirements for private securitisations (see question 23) combined with improved flexibility in due diligence requirements (see question 5). That may enable NBFI originators of SME loans to use securitisation as a funding channel.

That said, the principal levers at HMT's disposal that would help encourage bank investment in SME securitisations are not Sec Reg levers. Capital treatment is the key driver including calibration of RWAs for securitisation positions and appropriate scoping for STS vs non-STS. NBFI originators are becoming a larger component of the UK SME financing market. NBFI originators typically seek senior financing from banks by way of private securitisations of SME loan portfolios. Banks could be incentivised to provide such financing by improved capital treatment of such exposures e.g. by adjusting the ‘p’ scalar in the SEC-SA formula for SME securitisations. Alternatively, government agencies (e.g. the British Business Bank) could provide direct guarantees of senior tranches of SME securitisations; currently the British Business Bank has the ENABLE guarantee product but this only partially guarantees the underlying loans which results in a less capital efficient outcome for banks than a direct guarantee in light of the CRR credit risk mitigation requirements).

Public transactions

In the case of public securitisations, capital treatment and LCR eligibility are the main areas where improvements could be made to encourage bank investment in SME securitisations, with improved flexibility in due diligence requirements (see question 5) also playing a part. We would note that LCR treatment more generally has significantly harmed secondary market liquidity for these instruments and bank treasuries' demand for this issuance. This is both because STS securitisation was included at a Level 2B (rather than Level 2A or Level 1) and because previously eligible securitisation instruments (from the pre-STS regulatory framework) are now excluded entirely.

That said, bank-originated SME assets lend themselves most favourably to synthetic (rather than cash/traditional) securitisation due to the reasons outlined above making cash SME securitisation generally more difficult and expensive relative to other funding sources. In our view, HMT's focus should be predominantly on ensuring efficient synthetic options to allow risk management and distribution to allow banks to manage capital, risk limits and concentrations dynamically to support further origination/lending.

4. ***How, in your view, has the introduction of the Sec Reg affected the UK’s securitisation market since it took effect on 1 January 2019?***

As the CfE points out, a number of significant events have happened in the last several years that will all have had an effect on the UK securitisation markets. The introduction of the Sec Reg, the Brexit process and the COVID-19 pandemic (and associated emergency measures) are among them, as are broader liquidity measures, such as the TFS and TFSME. Unpicking these is not straightforward.

The CfE also correctly points out that it is difficult to measure the effect of the Sec Reg because there has not been very much time to do so. Much of the regime was not in place on 1 January 2019 when the Sec Reg began to apply and the first securitisation repositories have only been authorised in the EU in recent weeks (none has yet been authorised in the UK). There are still no binding technical standards setting out the detailed rules for risk retention as contemplated in Article 6. The first UK STS transaction was only issued in April 2019. So while we offer some observations below, it is worth bearing in mind that these are necessarily limited by the fact that our observations have been made over a short time and in respect of an incomplete regime.

In addition, the Sec Reg cannot be viewed in isolation. To properly assess its impact, it must be evaluated by reference both to the Associated Prudential Rules as well as AIFMD and UCITS for funds and the regulatory frameworks applicable to alternative sources of funding, including in particular covered bonds (the closest parallel due to their secured nature).

Viewed in the round, the assessment of the Joint Associations is broadly that there has been some harmonisation benefit as well as some increased robustness of products, but these benefits are outweighed by higher compliance requirements and costs, especially for issuers. In particular, these increased requirements and costs come without a commensurate set of benefits from market development, such as additional confidence or investment capacity from investors, including in relation to STS securitisations.

Part of the reason for this is that the Sec Reg, although intended to encourage new investors into the market, has had the opposite effect by increasing the barriers to entry for investors. No other fixed income instrument intended for the wholesale financial markets has either the transparency or due diligence requirements *prescribed by primary legislation* in anything like the level of detail that the Sec Reg requires. As a result, sell-side entities are required to provide – and institutional investors are required to review – a large volume of information, regardless of whether either of them considers it useful from a credit perspective. Even established investors in the securitisation markets have often had to seek outside legal assistance in designing a due diligence process that meets the requirements of the regulation. That cost, combined with the burdensome day-to-day compliance with those processes even when they are designed and in place, provides a powerful disincentive for existing securitisation investors to continue to include securitisation in their portfolios and *a fortiori* serves to severely limit the number of new investors willing to add it to theirs.

In addition, there are practical implications of these excessive disclosure and diligence processes from an execution standpoint. Securitisation transactions take longer to prepare and need to be marketed for a longer period both of which reduce the product's attractiveness relative to other options due to the exposure to execution risk over the preparation phase and the marketing period. Securitisation trades might take three months or more to structure, and then when marketed require a one- to two-week execution process. Covered, financial and corporate bonds require much less time to prepare (often a few days or less) and can sometimes be in and out the market within a single day –

certainly within 2 days. Added to the structural restriction on maturities which doesn't exist in any other product, the lower liquidity due to the barriers for investors and the consequent implications from a relative value perspective making it a relatively more expensive instrument, all of this combines to make the securitisations significantly less attractive than many other funding sources.

Article 9 in general is difficult to apply and comply with, especially in relation to acquired portfolios, forward-flow transactions and transactions with a sponsor.

In addition to this, there have been some problems of supply as a result of both cheap funding provided by schemes such as TFS and TFSME and the much more benign regulatory environment for covered bonds. Both of these are alternative, asset-backed sources of funding for banks, and for so long as there is an unlevel playing field they will tend to reduce the supply of securitisations in the market – especially STS.

As a result of the above, the cumulative effect of the Sec Reg appears to the Joint Associations to have been to make securitisation markets shallower and less liquid than they otherwise would be. As a result, they are prone to greater and more exaggerated periods of market stress than the real credit quality of the product or the underlying assets would typically suggest.

5. ***In your views, has any ambiguity around the geographical scope of the Sec Reg's requirements impeded securitisation transactions? If so, what clarifications could be helpful?***

The Joint Associations are of the view that ambiguities (and limitations) in this respect have impeded securitisation transactions and these could very usefully be clarified.

As a preliminary matter, however, we wish to clarify that we are aware of the solutions proposed by the Joint Committee of the ESAs in their Opinion dated 26 March 2021 (the "**JSA Opinion**") and we do not support them. The significant majority of the issues they identify in respect of the EU regime are not, in our view, real market issues (either in relation to the EU or the UK), and the proposed solutions would broadly be harmful to the market without adding any additional supervisory benefits.

The two areas of concern with regard to the jurisdictional scope of application are outlined in more detail below:

<u>Scope of obligations in respect of third country transactions</u>

This is primarily to do with the due diligence obligations imposed on UK institutional investors when investing in third country securitisations. These problems could be addressed in a number of ways, but perhaps the simplest and most elegant would be to eliminate the distinction between Articles 5(1)(e) and 5(1)(f) and replace this with a general obligation to conduct due diligence proportionate to the risk of the securitisation position, which would amount to an extension of the existing statement at paragraph 2.9 of the PRA's SS10/18. This would include an obligation to ensure the investor had obtained sufficient information to have a good understanding of both the transaction and the underlying assets. It could then be supplemented by additional guidance from the

PRA and the FCA (as appropriate) in a way that is more flexible and responsive to market needs than primary legislation.

A possible alternative solution would be a substituted compliance approach, where the UK regime either granted equivalence to other jurisdictions or simply required that investors check that the sell-side entities had complied with their local disclosure rules.

We do not believe either of these is as sensible an approach for achieving interoperability, however. The equivalence approach would require constant monitoring, be at risk of change by the other jurisdiction and therefore be unstable requiring a cumbersome and ongoing equivalence assessment process from UK authorities. The second approach, on the other hand, would require individual investors to investigate and develop expertise on local rules for disclosure of information which was otherwise irrelevant because it would have no bearing on their particular credit analysis.

By way of background, HMT will be aware of the long-standing problem under Article 5(1)(e) of the EU Securitisation Regulation, which is not clear about what disclosure EU institutional investors are required to obtain from third country sell-side entities in order to fulfil their due diligence obligations. The UK sought to helpfully address this via modifications to Article 5(1)(e) and the introduction of Article 5(1)(f) of the Sec Reg, which goes some way to addressing the uncertainty by introducing a requirement to obtain "substantially the same" information provided "with such frequency and modalities as are substantially the same" as would have been required had the sell-side entities been established in the UK. There are two issues with this solution, both of which could helpfully be addressed:

(a) The "substantially the same" standard is uncertain. The UK market has so far been comfortable that entities complying with the EU Securitisation Regulation, for example, will meet the "substantially the same" standard, but substantial and unhelpful compliance uncertainty remains with virtually every other jurisdiction, which creates an unlevel playing field between those who take a conservative interpretation of the rules (e.g. interpreting the "substantially the same" standard as requiring templated asset-level data) and those willing to take greater regulatory compliance risks through a more liberal interpretation (e.g. interpreting the "substantially the same" standard as being satisfied by pool-level data on the asset).

(b) Even if it were sufficiently clear, the "substantially the same" standard is overly restrictive. To our knowledge, the disclosure requirements in the UK are unmatched anywhere in the world (bar the EU) both as to the content of the disclosure requirements (templated loan-level data disclosure across all asset classes) and the modalities of disclosure (the existence of repositories). There is a serious risk, then, that the requirement to restrict investments to jurisdictions where the standard is "substantially the same" disclosure as in the UK would mean restricting UK investors' choice of investments to UK and EU securitisations because non-UK (and non-EU) originators often do not provide the level of templated loan-level data required under the Sec Reg and would be either unable or unwilling to do so in order to attract UK investment. This would lead to higher concentration risks and lower returns for UK investors and their stakeholders than if a broader range of investments was open to them.

Our suggested approach of requiring proportionate due diligence to be carried out addresses these issues in an elegant and sensible way. To the extent that HMT adopt our preferred "proportionate due diligence" approach, these issues would therefore no longer arise. If, instead, HMT are minded to keep the "substantially the same" standard (which would not be our preferred approach), then it would at least need substantial clarification, notably to explicitly permit investing in securitisations without templated loan-by-loan data since many of the largest securitisation jurisdictions – notably the United States – do not require (and therefore originators do not produce) such data to the same extent. Similarly, it would be extremely helpful to clarify that the use of a designated "reporting entity" and securitisation repository would not be required in order to meet the test of "substantially the same" reporting modalities.

Scope of regulation

The Sec Reg does not contain any statement of its territorial scope, and this is problematic. This could helpfully and straightforwardly be addressed by including a provision in the legislation specifying that the Sec Reg only creates obligations on entities established in the UK.

Although the Sec Reg contains certain clues to the intended territorial scope of the regulation (e.g. the definition of certain categories of institutional investors referred to in Article 2(12) or the designation of competent authorities in Article 29), these are incomplete and leave room for ambiguity.

While the market has been functioning without clarification on this point, it has proved an irritant on the margins and could helpfully be clarified.

6. ***How do you think the UK securitisation market has performed in comparison to other jurisdictions, both:***

   a. ***Since the GFC, and***

   b. ***In response to Covid-19?***

Key issuance, outstandings and performance data for the EU and UK can be found in in the AFME Securitisation Data Report published quarterly and available here. See also Section 3 of Appendix 1, and Appendix 2 which includes relevant credit performance reports from AFME's credit rating agency members.

AFME is pleased to provide or help source any more data on request.

Since the GFC, the European securitisation markets (including the UK) have not performed strongly, either in absolute terms or when compared to other significant markets such as the United States. Issuance volumes for the EU and UK have remained low and 2020 combined issuance was the lowest since 2013 (see Appendix 1 page 50). In 2008, the size of the European securitisation market, including the United Kingdom, was

75% that of the US. In 2020, it was just 6%.[4] Having said that, of placed issuance the UK typically represents a sizeable share compared with other European countries. See AFME Securitisation Data Report for Q2 2021, pages 14-15.

There are a number of reasons for this. On the supply side, the TFS, TFSME and (in the EU) TLTRO have reduced the relative attractiveness of securitisation as a source of asset-based funding. The market will need to support future growth as central bank funding is withdrawn and the securitisation regulatory framework as presently designed risks preventing that by increasing the costs and complexity of market participation relative to other products in a way that is not justified by the credit performance of European securitisations during or since the GFC.

Since the beginning of the COVID-19 crisis, the UK securitisation markets have declined relative to pre-pandemic levels given substantial volumes of cheap liquidity provided to banks, the increase in deposits (due to increase in savings during the lockdowns) and constraints on lending during the lockdown period.

The increase in capital requirements under the implementation of the Basel III securitisation framework in 2019 along with subsequent restrictions to LCR eligibility (going from the 2015 requirements to an STS-based model with no grandfathering) and the imposition of excessive capital requirements for insurance company investors in securitisations (that are often higher for a senior tranche of a securitisation than for a "whole loan" pool with no credit enhancement) have created further disincentives to issuance for banks.

Securitisations have, however, performed well in terms of defaults and losses, having outperformed US ABS even in the GFC (see Section 3 of Appendix 1). Credit losses have been significantly lower than other sectors, including corporate debt up to and through the COVID-19 crisis, where securitisations suffered a temporary liquidity impact in terms of market pricing which quickly normalised.

So while additional Sec Reg rules around diligence and disclosure have provided a legal framework for the product, they have not in fact created meaningful additional market safety, nor have they done much to develop the market or increase financing of the real economy at a scale that reflects the potential of the product.

7. ***If you have not originated, issued or invested in an STS compliant securitisation yet, what were the main reasons?***

The benefits achievable from a STS designation are not consistently sufficient to undertake the compliance burden of achieving the STS designation.

See our answer to Question 1 for the factors investors take into account in deciding between investing in STS or non-STS securitisation. See also page 52 of Appendix 1 for data on STS/non-STS issuance since 2019.

[4] https://www.esm.europa.eu/blog/reviving-securitisation-europe-cmu

8. ***If you have previously chosen not to designate a securitisation as STS even where the transaction was likely to qualify as STS, what were your reasons?***

   Our members inform us that the only such situation was where there were data availability issues which could not be remedied without significant operational changes.

9. ***What are currently, in your view, the main impediments to the growth of the UK's STS market?***

   See Appendix 1: Executive Summary, Key Messages (pages 10-16 thereof) and Section 5 for a comprehensive analysis of the impediments and our recommendations for how they should be addressed.

   Further, the regime has been put in place at a time when the most significant issuers in the market for STS product have mostly been absent due to more attractive alternative funding sources (e.g. TFS/TFSME). While we have seen some modest issuance in this space, it is unlikely to significantly develop where funding needs remain modest and other sources of funding remain more attractive.

   The ABS market's relative attractiveness depends on a wide variety of factors including pricing, flexibility, execution efficiency and depth of investor base.

   ABS tends to be more restrictive than other funding sources (e.g. covered bonds) in terms of being more expensive, the issuance process lengthier (meaning greater exposure to execution risks) and disclosure barriers being significantly higher and having much more limited scope in terms of maturity and currency options which make it less appealing where funding requirements are more modest.

   The Sec Reg regime has not facilitated greater depth or breadth of investors for ABS product (see above) and if anything have significantly increased barriers to entry for new investors, constrained the universe of eligible product for some existing investors (e.g. LCR buyers) and brought about a more limited range of product flexibility (e.g. maturity restriction on LCR at 5 years).

   In addition, Article 243 of the CRR establishes a maximum concentration limit for "exposures to a single obligor", directly precluding the STS designation of certain asset classes where concentration is not measured at obligor level. This affects securitisations of commercial mortgage loans that finance the UK private rented sector including the social housing sector, which are typically backed by several thousands of lease agreements to individuals with only a handful of obligors. This effect is reinforced by the restrictive maximum risk weights for underlying exposures (also in Article 243 CRR), which essentially preclude commercial exposures.

   Finally, it would be helpful for the synthetic securitisation market in the UK for the STS regime to be extended to synthetic transactions. Doing so would help banks continue their hedging strategies using SRT. The newly-introduced EU STS framework for synthetic STS confers a capital benefit in relation to originators' retained senior tranches, but no investor capital benefit or LCR benefit. The originator capital benefit is nevertheless expected to increase the supply of synthetic deals that make economic sense for originators and hence the supply of deals available for investment. We hope that a similar regime could be implemented in the UK, noting that there is room for improvement on the EU regime, so we would not recommend simply replicating the arrangements the EU have put in place. In particular, it would be helpful for a UK regime to be designed such that it reduces the tensions between achieving STS and achieving SRT (invariably the goal of a synthetic securitisation). See further pages 71 and 77 in Section 5 of Appendix 1.

10. ***How do you think securitisation could better support the financing of the real economy, in particular SMEs? What specific measures would support this?***

The greater the investor base and breadth of competition in the market place the greater the depth of capital available to support real economy lending and in turn, the more efficient this will be.

Many of the features of the Sec Reg regime aim to improve the robustness of the product from a credit perspective (arguably to an excessive extent compared with other products which have seen much more significant losses e.g. corporate debt) but at the expense of the attractiveness of the market in terms of onerous and costly compliance, but importantly also in the development of investor depth, liquidity and flexibility all of which contribute to the market remaining prone to periods of exaggerated liquidity stress.

The market is also restricted to predominantly two to five-year maturities, which is significantly limiting relative to other products (e.g. covered bonds range from two to 20 years). This is partly a reflection of the investor base, where mandates tend to be targeted at three to five-year buckets, but also the restriction on weighted average lives of assets within STS and the LCR. These factors are circular, as with regulatory restrictions preventing a significant liquidity generating part of the market (banks) from participating beyond five-year maturities, other investors are disincentivised from targeting mandates beyond this because bank investment provides supporting liquidity. ABS is the only market where such a restriction exists, and this is a key reason why the market is so concentrated on such a narrow maturity option. Removal of these restrictions would allow for a potentially significant expansion in maturity to comply with LCR which in turn would drive additional liquidity and also provide more attractive funding to extend beyond the four-year TFSME term.

Key barriers to the use of SME loan portfolios in securitisation (STS or not) are related to the requirements for loan-by-loan disclosures, to the large, highly granular, often revolving and non-homogenous loan pools, and constraints to synthetic securitisation, etc. Prior to the GFC, SME securitisation played a greater role in the European securitisation markets. That is not the case post-GFC and the above constraints, which were introduced by the Sec Reg regime, contributed to that – for SMEs as well as for small-ticket commercial real estate and buy-to-let residential mortgage portfolios. Another important barrier to an expansion of bank SME lending supported by ABS is the relative funding cost of the product versus other channels for banks (funding is fungible, and it’s cheaper to fund through e.g. retail or covered bonds or RMBS). Banks are much more likely to use synthetic securitisation to manage capital to support SME lending. Importantly, unlike in other areas, cheap central bank funding does not have a significant impact on the need for securitisation as a funding tool using SME loans. This is fundamentally because funding is fungible and – for the reasons outlined above in question 3 – SME and other corporate loans do not lend themselves to efficient cash securitisations relative to other funding sources, including securitisations of other assets, retail deposits or unsecured bonds.

Given the above, the following measures would help securitisation to better support lending to the real economy and SMEs (see also Section 5 of Appendix 1):

- More appropriate (i.e. risk-sensitive) capital/RWA calibrations, supported in part by a framework for synthetic (OBS) STS securitisations.
- Increased efficiency of the SRT application process.
- A more flexible approach to the treatment of excess spread and pro rata amortisation in SRT transactions.
- A more favourable treatment of ABS as HQLA in the LCR (see Section 5 of Appendix 1 for details).
- Removing the five-year maturity restriction on ABS LCR criteria (which does not appear to have a Basel basis anyway).

For private securitisations:

- More appropriate and risk-sensitive capital requirements for banks providing senior financing to NBFI originators of SME loans.
- Direct government guarantees of senior tranches of SME securitisations.
- Support in the form of e.g. portfolio guarantees from the British Business Bank for smaller ticket SME lending.
- Less prescriptive due diligence and disclosure requirements for private securitisations in general.

11. How, in your view, has the introduction of the Sec Reg affected the interconnectedness of financial institutions in the UK?

We do not believe the Sec Reg has had a material effect on this. There needs to be greater use of risk transfer within the securitisation market, but this should be for risk transfer outside rather than within the banking system, to non-bank investors. This is one reason reform of Solvency II is so important.

12. How could the Sec Reg do more to address the risks that securitisation activity in the UK poses to financial stability?

The evidence summarised in Appendix 1, Section 3, the reports listed in Appendix 2, and widely available analysis in general demonstrates the excellent credit and liquidity performance of securitisation in the EU and UK through and since the GFC. Therefore we view the Sec Reg as already being excessively prudent. This has been a major limiting factor to market development.

If anything, the very fact of the regime being too prudent is now showing signs of increasing risks. This is because the lack of a level playing field for securitisation vs. other asset classes has reduced issuance and therefore reduced opportunities to develop and maintain experience and expertise in the asset class, thereby eroding capacity, depth, liquidity and market resilience. One egregious example is the Solvency II treatment of insurer investment in "whole loan" pools (very little capital required) compared with a securitisation of exactly the same underlying assets (very heavy capital required). See pages 64, 72 and 73 of Appendix 1 for more detail.

The Sec Reg would therefore best address the real, current risks by facilitating involvement in the securitisation markets (see, broadly the Recommendations in Section 5 of Appendix 1) so that the market can grow and become more liquid and resilient.

13. To what extent have different Covid-19 measures affected the performance of the UK securitisation market?

The UK securitisation market has performed well through the COVID-19 crisis. Although there was a short-term liquidity impact following the initial uncertainty of the first phase of lockdowns, this was broadly reflective of wider capital markets (e.g. the same was happening in corporates, covered bonds etc) and the market saw very little forced selling and recovered quickly. On the whole, transaction structures easily absorbed the temporary spike in COVID-19 payment holidays and there have not been widespread credit rating downgrades. Credit spreads widened when the pandemic first hit but then started tightening in H2 2020 and have continued to tighten since. Market conditions have been strongly supported by the liquidity programmes provided by central banks in the UK and EU (i.e. TFSME extension and PEPP) which have reduced funding requirements for banks creating a structural undersupply which has supported market stability and performance. It will be critical to supporting medium-term recovery and tapering of central bank programmes to ensure that the market depth and liquidity develops to sustain higher issuance volumes generally.

UK payment holiday programmes resulted in an appreciable increase of borrowers in payment deferrals for many deals but most of this has worked through so such deferrals are back to a low base. The stay on evictions saw pressure on UK buy-to-let landlords although the asset class has performed well. The stamp duty measures saw confidence in the UK housing market returning quickly. Performance has no doubt been supported by HMT relief for affected workers and other factors, and we remain cautious as to a longer-term impact on performance as the economic position returns to a more normalised environment.

Lockdown measures themselves adversely affected credit card securitisations where lower consumer activity meant reduced purchasing volumes, higher principal payment rates (initially) and falling book sizes.

14. How, in your view, has EU Exit impacted the UK securitisation market?

The impact on levels of market activity have so far been limited due in large part to the effective exercise by the PRA and the FCA of transitional powers – and especially the TTP. To the extent there have been impacts, however, it has complicated compliance, increased already high compliance costs and reduced the investor base – especially as a result of UK transactions all ceasing to be STS-eligible for EU purposes. These problems would get worse, not better, if the transitional measures under the TTP were to fall away on 31 March 2022 (as currently scheduled) without effective alternative mechanisms being put in place. The approach suggested in the JSA Opinion (for the EU) of requiring market participants to be established in the relevant jurisdiction is actively unhelpful and unnecessarily increases barriers to cross-border transactions and investment.

Unlike many other wholesale financial market products, securitisation is highly regulated both at the point of issuance and throughout the life of the transaction. By comparison with the wholesale corporate bond market, for example, the compliance challenges are much greater, and the need for some form of cross-border arrangements such as alignment of rules or substituted compliance are accordingly much more important. Unlike corporate bonds, securitisations come with extremely detailed requirements including structuring rules, disclosure templates, disclosure repositories and due diligence.

To the extent that the UK does not amend its securitisation rules to assure interoperability with the other main securitisation markets globally, compliance would become more onerous, and this problem would increase to the extent that the regimes diverge in a way that does not allow for efficient simultaneous compliance with multiple regimes. Even equivalence and *de facto* alignment of rules is costlier and more onerous than having a single set of rules because they are viewed as temporary and unstable, so market participants need to allocate (and price in) the risk that such arrangements come to an end. To the extent that this perception of instability can be addressed (even if only on a per-deal, grandfathering basis) that would be enormously helpful.

Already, there are issues in the markets with dual compliance, with investors seeking covenants that transactions will continue to comply throughout their lives with both the EU and UK Sec Reg regimes. Originators or other economic sponsors of transactions are often willing to ensure "day one" dual compliance but reluctant to provide assurances of ongoing dual compliance because the associated costs are uncertain and potentially significant. The solutions that we suggest in this response would mitigate these issues to some extent.

15. Does the risk retention framework effectively balance prudence and market functioning? If not, how could it be improved?

The risk retention framework in general delivers a reasonable balance and provides appropriate optionality for compliance while ensuring alignment of interests between the sell- and buy-sides. That said, certain improvements to the regime could be beneficial, including:

- Adoption of binding technical standards in the UK in order to clarify outstanding issues like the proper interpretation of the "sole purpose" test and to provide certainty in more complex situations not explicitly contemplated in the Sec Reg text itself.

- Permitting "L-shaped" retention (i.e. a combination of vertical and horizontal retention). This combination of two of the available options would provide additional flexibility for market participants to structure their affairs without any reduction in the effectiveness of the policy to ensure alignment of interests. Because this approach reflects risk retention rules in the US, it would also facilitate cross-border market access as between the UK and the US.[5]

- Allowing excess spread to count toward risk retention in SRT transactions. This would be a natural consequence of recognising the first loss absorbing position of excess spread in the transaction and help to make SRT transactions more efficient.

- Allowing for additional permitted risk retention holders where circumstances make this appropriate. For example, in CLOs where the underlying assets consist of positions in broadly syndicated loans, the concept of a loan "originator" is not an economically accurate way to describe the arrangements. In such situations, a more sensible approach would be to permit the manager to hold the risk retention piece as manager, rather than requiring it to (somewhat artificially) qualify as an originator, or seek a largely irrelevant authorisation to be a sponsor. There is also the example of NPLs where allowing the servicer to retain may be appropriate. See below responses to questions 18 and 19.

- Providing sensible rules on changing the identity of the risk retention holder, for example where there is insolvency of the retainer, or a group restructuring. It might even be appropriate to permit a change in risk retainer where a transaction is structured to comply with the risk retention rules in multiple jurisdictions and a change in retainer identity is required for continued compliance due to changes in the regime in another jurisdiction that could not have been anticipated at closing. In each case any change to the identity of a risk retainer could be made subject to stakeholder and/or regulator consent (or non-objection, at least).

As more of a transitional matter, it might also be appropriate to make adjustments to the UK retention scheme to grandfather pre-2021 transactions that make use of retention on a consolidated basis under Article 6(4) using an EU parent. These presently continue to be permitted as a result of the exercise of the TTP but that is due to end in March 2022 and the retention arrangements would cease to be compliant at that time absent legislative or regulatory intervention to provide permanent transitional relief. Permanent transitional relief is appropriate in the circumstances, given that – as a matter of law – the parties are not entitled to change retention arrangements in order to be compliant.

[5] Note, however, that this would only be one step in the direction of facilitating this cross-border market access. There remain significant differences between the US and UK (and EU) risk retention regimes, including hold periods (US risk retention does not typically have to be held for the whole life of the deal) and valuation methodologies (US risk retention takes a "fair market value" approach rather than a nominal value approach.

16. Which modalities do you use and what motivates this? How many securitisations (volume & value) have you used each modality for?

The choice of risk retention option depends on the particular type of transaction and its commercial and regulatory drivers. For example:

- Most UK securitisations done exclusively for funding purposes use first loss retention. This is primarily because the first loss piece of the transaction is the most expensive to fund when placed with a third party investor and so – absent a driver that makes another option more appealing – it tends to be the default.

- Transactions designed to achieve SRT will almost invariably use vertical retention, though they will occasionally use random selection. This is because – having achieved SRT – the originator is most concerned to minimise the capital cost of the retention piece. A vertical slice achieves this, as does retention of 5% of the underlying assets (each of which will be risk-weighted significantly more favourably than the 1250% weighting that would generally be assigned to, e.g. a first loss piece). For synthetic securitisations the 5% vertical retention is typically held as a 5% *pro rata* share of each underlying asset.

- Master trusts will typically hold their retention piece via the originator share option (either option (a) or option (b)) because this is operationally easiest.

- Other options may be chosen (including particular versions of each option historically authorised under the risk retention RTS) for a variety of reasons including originator or investor tax considerations and which options fit most easily with other jurisdictions' risk retention rules. For example, vertical retention is most likely to work efficiently for deals where dual compliance with the US is a consideration, because vertical retention works similarly under EU and UK rules (taken together, they are not appreciably different from each other in most cases) on the one hand, and US rules on the other.

17. Do you consider the risk retention modality when making investment decisions?

Members of the Joint Associations do consider risk retention, but only in that they are concerned to ensure that there is robust and substantive compliance. All modalities provide the required alignment of interests that is required and the confidence to invest knowing that the bad behaviours of the pre-GFC markets are not likely to be repeated.

18. What is the impact of the risk retention rules on securitisations of NPLs?

The risk retention rules as they currently stand in the Sec Reg are a major barrier to the securitisation of NPLs, but there are also issues in the credit granting criteria verification rules (Article 9) and the due diligence rules (Article 5) that should be addressed.

Four out of the five permitted methods for risk retention under the Sec Reg calculate the amount of the retention by reference to the nominal amount of the underlying securitised exposures, regardless of the amount paid by the securitisation vehicle to acquire those exposures from their originator(s). In the case of an NPL securitisation where assets are sold into the transaction at a significant discount, this is clearly inappropriate and inefficient, and can make otherwise viable NPL securitisations uneconomic.

Consider the example of an NPL securitisation where a portfolio with a nominal amount of 100 is sold into the securitisation with a discount of 90%. If the originator uses first loss (option (d)) retention, it would have to hold retention of 5 – being 5% of the nominal amount but 50% of the value paid for the portfolio. If, on the other hand, the originator uses vertical retention (which is the only method where retention is calculated based on the value of the liabilities issued by the securitisation vehicle) the retention would be sized at 0.5 (being 5% of 10). The latter is clearly the more appropriate sizing of retention in a scenario where only 10 of cash is being raised against the portfolio, and should be permitted for all retention methods, not just vertical retention. The choice of retention method is driven by a number of commercial factors (see above for further detail) and market participants should not be restricted to vertical retention for NPL securitisations by what is commonly acknowledged to be a historical accident of drafting. This is precisely the kind of drafting infelicity that would be more easily remedied by moving the bulk of the securitisation rules into the regulators' handbooks, rather than having them in difficult-to-amend primary legislation.

19. In light of the PRA's ongoing consultation on the securitisation of NPLs, would the effectiveness of NPL securitisation be enhanced if the servicer was allowed to fulfil the risk retention requirement?

Yes, The Joint Associations also recommend that special servicers be added as an eligible retainer in respect of NPL securitisations. Unlike most securitisations of performing exposures, on NPL securitisations the skill and diligence with which special servicers work out an NPL portfolio play a significant role in determining the returns on the underlying exposures. A special servicer will often be the entity in the structure who knows the exposures best and has most direct control over the success of the workout. It is also common for the compensation of the special servicer to be based in large part on the proceeds of the workout[6]. For all of these reasons a special servicer is an obvious candidate to hold the risk retention, since having its interests aligned with those of investors is an important factor in producing good outcomes for investors.

We made these points in our response to the PRAs consultation on the implementation in the UK of the recent Basel Technical Amendment for NPLs.

[6] Which, for the avoidance of doubt, should not be precluded by the anti-avoidance provisions of the NRPPD definition where the originator is also the servicer and the fee is paid at a reasonable commercial rate.

20. ***What are your considerations in deciding whether to issue a private or public securitisation?***

Both are mostly used as a form of asset-based finance that serves to minimise the risk to the financier (and therefore the cost to the borrower). Both can also be used as a form of capital management for the originator. Beyond that, they serve different purposes.

Public securitisations broadly involve the relevant banks serving an agency role, distributing the risk to the wider market.

Private securitisations are undertaken where banks are comfortable to hold the risk themselves (on a bridge basis, or otherwise) and structure it as a securitisation to offer competitive financing to the underlying client. For example, warehouse facilities, many trade receivables securitisations, ABCP programmes, synthetic (OBS) securitisation. They are also commonly used as a pipeline for future public securitisations. Many lenders (and especially NBFIs) will use private securitisation warehouses to fund new originations, ramping up the volume until a critical mass has been reached to make a public securitisation viable.

Another common consideration for structuring a transaction as public vs. private has to do with the sensitivity of the data intended to be disclosed as a part of the transaction (either as a result of regulatory requirements or negotiation between the sell- and buy-sides). Where there is particularly sensitive information that may be disclosed, there is an incentive to structure the deal as a private transaction to allow the sell-side to continue to judge, on a case-by-case basis, who is entitled to transaction information. In particular, it allows the sell-side entities to retain control of who qualifies as a "potential investor" and is entitled to disclosure on that basis. If the transaction is structured as public, then a requirement would arise to report to a securitisation repositories, who would be under an independent obligation under Article 17(1)(j) of the Sec Reg to provide information they hold to investors and potential investors. Repositories would, as a result, generally insist on making the determination of who qualifies as a "potential investor" themselves, and they may in certain cases come to a different conclusion. No repository has yet been authorised in the UK; two have recently been authorised in the EU.

21. ***What are your considerations in deciding where to list your securitisation, both in the UK and in other jurisdictions?***

See question 20 for detail around disclosure as a factor for if and where to list. Listing on a UK regulated market is the main reason a securitisation would be considered "public" for Sec Reg purposes and therefore sell-side entities might choose to list elsewhere or not at all if they wanted the transaction to be considered "private". Similarly, if a securitisation was listed on an EEA regulated market, it would be considered public for purposes of the EU Securitisation Regulation.

Having the exchange be a "recognised stock exchange" for the purposes of the quoted Eurobond exemption is also an important consideration.

The extent of distribution and expected future trading is also a relevant consideration. Where little or no trading is expected, for example, one might use an offshore stock exchange with relatively light disclosure requirements. Whereas for a transaction where more liquidity is anticipated by the sell side (and expected by the buy side) then either a regulated market or an MTF might be used.

Beyond the above, the listing considerations are relatively minor and turn on things like the flexibility and promptness of document review, jurisdiction of incorporation of the issuer (listing will sometimes be aligned with this), reliability of listing rules, investor perception and cost. Note also that the disclosure obligations imposed by an exchange are relatively minor in comparison to those required by the Sec Reg and the templated disclosure approach for all securitisations (public and private) prescribed under it.

Of course, it is worth noting for completeness, that many securitisations are not listed at all.

22. How do the costs and benefits of listing securitisations vary by jurisdiction?

As above. Smaller, offshore exchanges tend to have lighter disclosure requirements but also less liquidity and are mainly useful for "technical listings" in order to satisfy some investors' requirements to be investing in a listed bond and/or the quoted Eurobond exemption.

Regulated exchanges and MTFs have similar benefits to each other – including generally good reputations with investors and better liquidity than smaller, offshore exchanges. Both regulated exchanges and MTFs tend to have fairly similar substantive disclosure requirements, but a deal listed on an MTF can avoid having to report to a securitisation repository, which means the sell-side entities can retain control over who is considered a potential investor and is therefore entitled to disclosure.

23. Do you consider the disclosure requirements (both the content and format) for private securitisations to be sufficiently useful? If not, how could they be improved? Please answer with reference to:

a. Bilateral securitisations;

b. Intragroup securitisation transactions; and/or

c. Any other private securitisation transactions

Disclosure for private securitisations has been a vexed question for the market, for many years. Based on our involvement in the legislative process back in 2015-2017, we believe that the original intention of the co-legislators of the EU Sec Reg was that templated disclosure should be limited to public transactions. ESMA undertook a detailed consultation with the industry on this basis that concluded in March 2018. Subsequent to that consultation, ESMA changed course and required templated disclosure for all securitisation transactions, whether public or private.

This has created considerable difficulty, cost and administrative burdens for the market, especially for originators, and is a significant obstacle to undertaking a securitisation for smaller originators. Further, the implementation of the requirement has been problematic, and has taken place without meaningful consultation with the industry – the consultation that closed in March 2018 having been framed and responded to on the basis that private securitisations would not be subject to templated disclosure.

Further, the content of the templates in question has been driven not by investor demand or requirements but is rather based on the templates used by the European Central Bank in its liquidity operations.

We believe the time is ripe, if not considerably overdue, for a full and proper consultation to be undertaken with the industry, including issuers, originators and investors, to ascertain what disclosure is possible, sensible, proportionate, flexible and above all practical and useful for all parties but especially investors. This consultation could also consider the question of relevant ESG factors, which are a relatively recent phenomenon.

This is an opportunity now available to the UK authorities which was not available before. The Joint Associations and their members would be pleased to engage in detail on this topic at the earliest convenience. For now, we set out the broad themes of a more sensible disclosure regime for the securitisation markets.

Taking the categories of securitisations set out in the CfE question, it seems clear to us that intragroup securitisation transactions should not be subject to regulatory disclosure requirements. Where there is no investor independent of the originator (or other economic sponsor) the mischief sought to be addressed by the disclosure requirements simply cannot arise. These are by their nature internal arrangements of a corporate group.

For bilateral securitisations, it is also clear that the current disclosure requirements in relation to private transactions are overly prescriptive, to the point of requiring disclosure that is frequently excessive and not useful to investors, while simultaneously being difficult and/or costly for the sell-side to produce. These requirements are often particularly onerous for less sophisticated originators/sponsors and investors. This is not to say that less, or less useful, information is provided to investors on private securitisations – quite the opposite. The private securitisation disclosure process typically takes place over many months and involves investors working closely with originators and understanding their business in great detail in order to understand risk drivers and determine the best way to underwrite the risk of the securitisation. See example timeline on page 76 of Appendix 1 of a typical disclosure process on a private securitisation to provide additional context.

In those situations, investors will necessarily be sophisticated entities involved in meaningful negotiations with the sell side and be able to ensure they are receiving precisely the information they require in order to make an informed initial investment decision and monitor their investment on an ongoing basis. Those negotiations are the best, most efficient way to ensure that investors are receiving all the information they need without placing undue burdens on the sell side to produce unnecessary information and – given the systemic balance of power between sell and buy sides on such transactions – we believe the parties should be free to decide on the content of disclosures on bilateral securitisation with relatively little regulatory intervention. At most, the regulatory framework should provide general principles for the types of disclosures to be provided (e.g. those currently in primary legislation) but leave the details to individual negotiations.

A good example of this would be asset-backed balance sheet loans by banks referenced in our introductory comments, that should very clearly be excluded from the more prescriptive disclosure obligations set out for public securitisations. Failure to do this would just serve to leave a barrier in place to borrowers accessing the loan market in the most efficient way available.

That leaves only the category "any other private securitisation transactions". This is perhaps the most difficult category, because it begs the question of where to draw the line between "public" and "private" securitisations – a complex and difficult question that the members of the Joint Associations believe should be subject to a further, dedicated consultation process with appropriate time allowed for full consideration. For the moment, however, we would offer the following thoughts:

- The line between public and private securitisations is not clear, and the appropriate level of regulatory intervention in the disclosure process will often be matched to the extent to which the transaction is public.

- There are a number of indicia of a transaction being public, most of which are indicative but not determinative. For example:
    - A transaction with an approved prospectus for the purposes of s. 85 of FSMA is almost certainly most appropriately treated as public. Conversely, a transaction with no offering document of any kind is almost certainly most appropriately treated as private. But a transaction with an offering document that is not an approved prospectus for the purposes of s. 85 of FSMA could easily fall into either camp.
    - A transaction with a listing/admission to trading should normally be treated as public, but this may not always be true, particularly where the listing is a "technical listing" on an offshore stock exchange that requires limited transaction information in order to grant a listing and is obtained mainly for the purposes of the quoted Eurobond exemption rather than to generate liquid public market in the securities.
    - Transactions where an announcement is made through a formal channel to a wide audience for the purpose of soliciting investor interest (leading to a "public bookbuild") will normally be public, but this is not strictly required for a public transaction.
    - The presence of a syndicate of banks underwriting the transaction and selling it on to end investors is a feature indicative of a public deal.
    - Transactions where there are a small number of investors all of whom have meaningful contact with and access to the originator will normally be private.

- The appropriate policy outcome for small, club deals with two or three outside investors will often be to treat them the same as bilateral transactions, with only broad, principles-based disclosure requirements imposed by regulation.

- Larger transactions with more investors and listings on markets such as the Irish Stock Exchange's GEM (not a full, regulated market listing, and no prospectus, but it does have an offering document and the listing does provide a meaningful and potentially liquid market), on the other hand, should probably be treated more like public transactions, though perhaps with a "comply or explain" approach to the disclosure templates rather than requiring strict compliance in all cases.

We recognise that the above feedback does not set out a single, clear, bright line and would not readily be converted into policy. Nonetheless, we hope it sets out more clearly some of the underlying economic realities onto which any policy choices would be superimposed and helps to progress an ongoing conversation about the appropriate policy outcomes in this difficult area.

24. ***Do you find the usefulness and quality of the information you receive on a securitisation to be materially different when available through an SR, to when it is not made available through an SR?***

It is not possible to answer this question on the basis of real world experience since no SRs have yet been authorised in the UK, and only two have recently been authorised in the EU. That said, members of the Joint Associations do not expect there to be a material difference, no, given that it is the content of information that is relevant rather than the method by which that information is made available.

We would also caution against applying the ESMA Guidelines on the use of "no data" options for reporting here in the UK. ESMA calibrated the tolerance thresholds by reference to Eurosystem loan-level reporting data, which is not an appropriate data set because of the absence of some asset classes and also the self-selecting nature of deals used for Eurosystem liquidity operations (i.e. where transaction parties were not capable of providing the necessary data, they would simply not have bothered to make the transaction Eurosystem eligible and it would not go into the sample ESMA used to calibrate the tolerance thresholds).

25. ***Does the fact that a securitisation is not reported through an SR impact your ability or willingness to assess credit risk and/or invest in a securitisation?***

Members of the Joint Associations report that it does not affect their ability or willingness to assess credit risk and/or invest in a securitisation.

26. ***Do you consider there would be any benefit to extending disclosure requirements for public securitisations to private securitisations, specifically:***

    a. ***The requirement to make information available through SRs; and/or***

    b. ***The requirement to fill in the templates on inside information or significant event information, as contained in Annex 14 and Annex 15 of the onshored Technical Standards?***

    As set out above in 23, members of the Joint Associations consider that the best solution is quite the opposite. Rather than extending the requirements for public securitisations, we would recommend making the disclosure requirements for private securitisations significantly less prescriptive, possibly accompanied by a re-assessment of the dividing line between public securitisations and private securitisations in order to ensure that this simplification was appropriate.

27. ***To what extent has your firm benefitted from the temporary recognition of EU STS by the UK?***

    The extent to which individual members of the Joint Associations have benefitted varies but in general we have found this very helpful and would encourage a permanent arrangement to be put in place. Certain banks in particular only invest in securitisation positions which can fulfil LCR eligibility criteria (which include STS status), so being able to include EU transactions as well as UK transactions increases the options available to UK banks for these purposes.

28. ***To what extent has a lack of recognition of UK STS by the EU impacted your firm?***

    This has resulted in increased difficulty in placing UK securitisations with European investors (primarily with European banks), which increases the cost of funding for certain portions of the economy, notably non-conforming and buy-to-let RMBS, two of the largest parts of the UK securitisation market. Sometimes rebooking investments in UK entities can help to address this problem but this is not always possible. This has also resulted in some increased capital costs for private securitisations which are compliant with UK STS and not recognised by the EU which can mean rebooking to different legal entities (and associated operational costs), restructuring and/or impacts on transaction economics/returns.

29. ***Do you have views on the merits, as well as any drawbacks, of HMT introducing an STS equivalence regime?***

    Members of the Joint Associations would support this, and indeed we view it as necessary to facilitate financing of the real economy as high levels of central bank intervention are withdrawn, *inter alia* by encouraging reciprocal recognition of the UK STS regime in other jurisdictions. As a matter of principle, it makes sense to allow UK investors to be subject to the same prudential treatment whether they invest in STS securitisations that are subject to an overseas regime or whether they invest in STS securitisations that are subject to the UK regime. This reduces concentration risk and gives UK investors greater choice. It is also in line with the UK's general approach to equivalence as expressed in HMT's guidance document[7], which in general favours being open, unless there is a specific financial stability risk which suggests otherwise.

Our understanding is that the following jurisdictions currently have or are considering legislating for Basel STC-aligned regimes and might therefore benefit from an STS equivalence regime in the foreseeable future:

- the EU
- Singapore
- India
- Japan
- Canada

It is important that any equivalence regime the UK puts in place should ensure that other jurisdictions are granted equivalence on a principles-based approach (e.g. are a reasonable implementation of the Basel STC principles) rather than a strict, granular assessment of whether the other jurisdiction has exactly the same requirements as the UK.

30. Are there any mechanisms other than an STS equivalence regime which, in your view, would give effect to the policy objectives in paragraph 5.7?

STS equivalence would be the main mechanism for giving effect to the policy objectives in paragraph 5.7 (a) and (b). They could also be supported by reviewing the STS securitisation criteria generally in order to identify areas where criteria could be simplified or eliminated without damaging the overall robustness of the label. This would make use of the label more attractive and facilitate mutual recognition on the basis of the Basel STC criteria.

We would also be supportive of revisiting the jurisdictional requirements contained in Article 18(2). It is unclear if they are really required or if the UK might take an approach more akin to the approach it takes with the Official List, where issuers from any jurisdiction may be listed provided they comply with the prospectus regime. This would have the notable advantage of permitting issuers and originators from any jurisdiction to qualify as STS regardless of whether their home jurisdiction had an equivalent regime. Indeed, it might even obviate the need for equivalence assessments by the UK authorities entirely.

As to the policy objective in paragraph 5.7(c), this could be supported additionally by implementing the policy changes mentioned above, including removing the 5-year weighted average life requirement for LCR eligibility (which does not appear to have a basis in Basel), upgrading the LCR treatment of securitisations and ensuring more risk-

[7] https://www.gov.uk/government/publications/guidance-document-for-the-uks-equivalence-framework-for-financial-services

sensitive capital treatment for securitisations in the hands of both bank and insurance company investors.

31. ***Do you have comments on the considerations relevant to making equivalence assessments under a new STS equivalence regime, as outlined in paragraphs 5.16 to 5.22?***

While co-operation arrangements might be preferable, it is worth recalling (for example) that the FCA currently admits securities to the UK Official List issued by issuers in most jurisdictions in the world, without requiring co-operation arrangements in respect of such admissions. These issuers are subject to the UK listings regime and the FCA is able to enforce compliance, by suspending the listing of an issuer that does not comply. A somewhat similar mechanism is already inherent to STS regime (in that the FCA is empowered to remove a particular securitisation from the UK STS register). The ability of the FCA to enforce obligations against an overseas issuer/originator/sponsor could also be boosted by contractual mechanisms (e.g. requiring the overseas issuer/originator/sponsor to make certain commitments to the FCA).

The concern with "imbalances" if a unilateral equivalence determination expressed in 5.22 of the call for evidence seems overstated. While it is true that it would be preferable for UK issuers/originators/sponsors if overseas jurisdictions recognised the UK STS framework as equivalent to their own frameworks, it is difficult to see how this imbalance (greater supply for UK investors without greater demand for UK manufacturers) would affect financial stability or competition in a negative way. The harm caused by limiting choice for UK investors seems more significant.

32. ***Do you consider an adaptation period accompanying any potential withdrawal of equivalence would be useful in the operation of a new equivalence regime for STS securitisation?***

If an equivalence determination were withdrawn, it would make sense to withdraw it only in relation to future STS securitisations rather than existing STS securitisations (given that most of the criteria for STS are complied with on issuance and the FCA is empowered to remove any individual securitisation from the STS register).

If HMT are minded not to take this "grandfathering" approach, then an adaptation period of two years would be welcome to allow for appropriate mitigations to be considered in relation to the capital and other implications of the withdrawal of equivalence.

33. ***If so, would it be desirable to introduce standardised adaptation periods for STS, or are there other factors which should be considered?***

As stated above in 32, a standard adaptation period of two years would be desirable, in the event HMT are not minded to take the "grandfathering" approach preferred by members of the Joint Associations.

34. ***Do you have any other views related to STS equivalence which you think should be considered?***

None. Our views are summarised in the responses to the questions above.

35. ***If disclosure requirements on environmental performance were to apply to all underlying exposures:***

    a. ***Is there enough information available to fulfil any such obligation?***

    b. ***Are there any underlying exposures where the information would not be available or where it would not be proportionate to collect?***

    c. ***What type of information on the environmental impact would you suggest (please provide as much detail as possible for different underlying exposures)?***

No, there is not enough information available at present.

EPCs are being introduced on a rolled basis so there is still a large portion of UK housing stock that does not have an EPC score. A large number of properties do not have an EPC, particularly owner-occupied properties. There is a decent case for new loans – particularly buy-to-let mortgage loans where there is now a minimum EPC requirement for rental leases – to meet some minimum reporting requirements, but refinancings of old pools and loans secured on properties which have been owned by the same owner since before EPCs were introduced should not be required to report this information. The properties will most likely not have a certificate and the information should not be required just because the loan is being securitised. In other words, the securitisation reporting requirement should be to report the EPC rating where the EPC legislation requires an EPC to exist in respect of the relevant property. Where this is the case, it should be possible to report the actual score (and not just the letter band into which the score falls). In particular, the energy consumption data could be useful in making comparisons across jurisdictions.

Similarly, for auto loans, emissions information should be a requirement for each new vehicle loan and for used vehicles it should be required where it can practicably be obtained (e.g. from the UK vehicle database).

There is also a concern with dealing with the back-book of existing originations. Also, while it is possible to consider environmental performance of buildings (commercial or residential) as well as of auto loans, it is unclear how that may be determined for other exposures (e.g. credit cards, SMEs or esoteric asset classes) – and especially for unsecured loans where there will not be a clear physical object with an environmental performance that can be measured.

It is important that any such disclosure requirements are calibrated carefully so as not to impose further burdens on originators; securitisation disclosure in the UK (and the EU, from which most of the UK's rules derive) is already the most extensive in the world. It should also be noted that industry is scrambling to keep up with developments, consultations and industry-led initiatives in this area. Therefore, a sensible and measured approach in the context of securitisation is needed if the UK seeks to create consistent and objective standards to allow the environmental performance of different asset classes to be monitored and compared.

36. In respect of current disclosure on residential mortgages and auto loans and leases:

a. Is the environmental performance data on a securitisation's underlying exposures which you currently receive sufficiently useful?

b. What other information would you find useful, if any?

Investors do not at the moment receive this information consistently so it is only of limited use and comparability across jurisdictions is an issue.

For additional information that would be useful, please see question 35. Flood risk and CO_2 emission data would be useful in addition to that mentioned above.

37. In respect of underlying exposures other than residential mortgages and auto loans and leases:

a. Are there other types of underlying exposures for which you would find it useful to have information on their environmental impact? If yes, which ones?

b. What information would you find useful?

In addition to environmental considerations, corporate and SME loans can also have ESG scores related to the companies' purposes.

At a minimum commercial mortgage loans should be able to provide the same data as residential mortgages.

Details on company/originator carbon offsetting policies would be also helpful for third-party servicers and other significant third parties, where relevant.

38. Generally:

a. How attractive, relative to other investable ESG securities, are securitisations that disclose environmental performance information?

Investors are today more interested in ESG issues and performance than in the past, but it is hard to say if this affects underlying economics of issuance. Ratings agencies have also become more interested in ESG risks.

Regardless, securitisations have an advantage in that sound, clear disclosure necessitates good deal governance and facilitates the implementation of strong accountability mechanisms. Securitisations used to finance "green" collateral can often also have a more direct, readily measurable impact on the environment than some other forms of "green" investments (e.g. electric autos and energy efficient housing or commercial property).

39. What additional readily available information on securitised underlying exposures could support the mainstreaming of ESG? Which underlying exposures would that impact?

One of the issues market participants are currently facing is that it can be difficult to have view on risk profile of some of the assets, at least for the time being. For example it is difficult to predict the residual values of electric vehicles. Another example is "social ABS" – it may be difficult to assess the credit worthiness of people with impaired credit history – which is one of the objectives of social securitisation. Does this need to be compensated by over collateralisation? Being able to have a better view of these credit issues associated with ESG objectives would improve the ability to mainstream securitisation of ESG underlying assets and could also limit "greenwashing" risks.

Additionally, 3rd party ESG scores on underlying collateral can be helpful. EPC ratings are an example of this, but if this type of concept could be rolled out more broadly to asset classes beyond residential property, that would be a useful data point to support this market.

40. Do you have any views on how the Sec Reg can better support the government's aims for green finance in the near future?

The same regulatory drivers mentioned above for STS and securitisation more generally would also be useful adjustments to support green finance (i.e. improved LCR, bank capital and insurance capital treatment, simplification of burdensome requirements, etc.). We are aware that the Bank of England is examining issues related to the incorporation of climate change factors into regulatory capital requirements.[8]

There is currently no regulatory definition of sustainable securitisation and, unlike the sustainable bond market and the sustainable loan market (for which there is a widespread market consensus for what constitutes a sustainable bond or a sustainable loan), there is no current widespread market consensus for what constitutes a sustainable securitisation. Our expectation is that over the next 12 months a market consensus for what constitutes a sustainable securitisation is likely to develop likely to develop. AFME is leading this work, and while there are currently varying views (for example, whether the sustainability test should apply just to the underlying assets, or to the use of proceeds, or both) we expect consensus to be reached as the market grows in importance and precedents in other fixed income markets also emerge and solidify.

Until such a time that there is a market consensus for what constitutes a sustainable securitisation, we do not believe that a clear regulatory definition of sustainable

[8] See https://www.bankofengland.co.uk/-/media/boe/files/speech/2021/june/tackling-climate-for-real-the-role-of-central-banks-speech-by-andrew-bailey.pdf and in particular the final paragraph on page 4.

securitisation would be helpful. For now at least there are no material differences yet between factors to consider in the UK and the EU in developing ESG securitisations but as consensus builds it will be important to achieve as much alignment and inter-operability as possible.

We note in this regard:

- The European Commission has stated that its proposed EU Green Bond Standard will be open to issuers of asset-backed securities.[9] Currently it is somewhat unclear what structures will fall within this definition.
- The FCA, in its discussion on ESG integration in UK capital markets, did not mention sustainable securitisations, but did raise the question of recognising market-led standards for green bonds (Q13) and the question of whether the UK should put in place a UK Green Bond Standard.[10] In our view it may make sense for the FCA to recognise market-led standards for sustainable securitisations in due course.

We are not in favour of a formal UK specific regulatory framework for sustainable securitisations – sustainability is a global issue and we would prefer a global, rather than a jurisdiction specific, approach.

41. What are your considerations, including costs and benefits, when deciding whether to use a TPV to verify STS compliance?

The use or not of a TPV is typically driven mainly by investor expectation. At the moment, use of TPVs is still frequently required both to help minimise originator/sponsor liability and also for investor reassurance. As originators and sponsors develop greater familiarity with STS criteria and standardisation/consistent interpretation of those criteria increases, some originators and sponsors may decide they are happy to certify compliance without the assistance of a TPV. It is unclear whether investors will be happy with this approach, however, as the vast majority of all STS issuances have used a TPV so far, meaning there is no market experience on which to base a conclusion about whether investors would be satisfied relying on the certification of the originator/sponsor without the endorsement of a regulated TPV.

42. When making investment decisions, how important is it to you that the compliance with the STS criteria is verified by a TPV? Please explain why.

Most investor members of the Joint Associations prefer to see the use of a TPV when investing in an STS securitisation. This is mainly a matter of having the reassurance that an independent third party agrees with their assessment as to the STS criteria, especially as TPVs are specialised in the area and are viewed as being closely in touch with regulators' views on interpretation of the criteria.

[9] https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_3406
[10] https://www.fca.org.uk/publications/consultation-papers/cp21-18-enhancing-climate-related-disclosures-standard-listed-companies

43. Do you think the TPV regime under the Sec Reg is appropriate? In particular:

- ***a. What are your views on the impact of the authorisation process for TPVs on the level of competition in the market?***
- ***b. What do you think could help foster competition?***
- ***c. Given the role that TPVs play in the STS market and the current number of authorised TPVs, do you think there might be any risk of harm arising from over-reliance on the assessment of a TPV?***
- ***d. Do you think the TPV regime should be amended to address those risks?***

We have read a draft of the PCS response on this question and we broadly agree with its conclusions. A lack of competition is a concern – but the best thing that could be done to increase competition would be to adjust the regulatory framework so that it is more hospitable to growth of the market. While it is difficult to know for sure, it seems likely that a larger market would support an increase in competition in this area.

44. SSPEs have specific obligations under Article 7 to ensure sufficient provision of information to investors. Do you consider this information to be sufficient to be able to ascertain a full view of the transactions, including the level of interconnectedness of institutions (if so desired)?

As described above, the level of disclosure required of sell-side parties under the Sec Reg is, if anything, overly prescriptive. It is certainly sufficient to ascertain a full view of the transaction. The level of interconnectedness of institutions is more appropriately thought of as a macroeconomic/systemic financial stability concern, which regulators (including the PRA and the Pensions Regulator) have the appropriate information to assess and powers to address via non-Sec Reg channels.

45. Do you think that this will be improved by the existence of authorised SRs?

We have no evidence to support a view here. We are of the view that it would be sensible to authorise securitisation repositories and then reassess after a sensible period of time – for example 1-2 years.

Securitisation repositories were mandated by the EU Sec Reg even though as stated earlier only two have been authorised (in recent weeks) in the EU, and none yet in the UK. The fact is that, for many years up until now (both before and after the EU Sec Reg) investors have obtained the necessary information they need to invest without SRs. Nevertheless we expect that SRs are likely to remain a part of the EU securitisation framework indefinitely.

46. As an originator/sponsor/ investor, how many SSPEs do you interact with on a per transaction/programme basis?

Typically one SSPE per transaction, although for master trust structures, ABCP conduits and other repeat-issuance structures there can be two or three.

47. Do you have any concerns with the robustness of the SSPE regime regarding its ability to:

a. ensure it is insolvency remote; and

b. ensure it has sufficient funds to continue operations (both generally and in the context of an enforcement or acceleration notice)?

No concerns. We think SSPEs have shown themselves historically to be very robust since the origins of the UK securitisation market. HMT may wish to consider whether it should adopt a specific securitisation law as many European jurisdictions have done in order to give specific statutory authority for the creation of an insolvency remote structure. At the moment, the insolvency analysis relies on a combination of general insolvency law, the Banking Act 2009 and case law. Putting the insolvency remoteness of SSPEs on a statutory footing may help simplify English legal opinions as a result.

48. Should HM Treasury introduce a system of LLBs to replace and centralise the functions of SSPEs?

No. Members of the Joint Associations see no advantages to this proposal.

49. Do you have any comments on HM Treasury's views regarding the definition of institutional investor under the Sec Reg, as it applies to AIFMs?

We broadly agree with HMT's views on this matter.

50. What are the practical effects of the due diligence requirements for non-UK AIFMs managing or marketing in the UK?

The current system creates uncertainty and more risk-averse AIFMs have in some cases declined to market funds in the UK as a result of this uncertainty.

51. Are there any perceived benefits of the extraterritorial requirements?

None.

52. Do you have any comments on HM Treasury's views regarding the definition of institutional investor under the Sec Reg, as it applies to AIFMs?

Members of the Joint Associations support amending the definition of "institutional investors" such that it excludes both non-UK AIFMs and sub-threshold AIFMs.

53. Do respondents have any concerns with amending this definition? Would this risk any unintended consequences that HMT should be aware of?

We believe the market would be supportive of carving-out unauthorised, non-UK AIFMs from the scope of the definition of institutional investor. However, we note that the Call for Evidence references "certain" unauthorised, non-UK AIFMs being taken out of scope. Further detail on the intended scope of the amendment would be helpful.

In closing, we wish to emphasise that the engagement of the HMT with market participants on issues related to the Review of the Securitisation Regulation is appreciated. We are grateful for the opportunity to contribute evidence in response to the CfE and we would be happy to answer any further questions that you may have.

Yours faithfully

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APPENDIX 1

Securitisation as a key pillar of the UK Future Regulatory Framework

See separate Powerpoint slide presentation prepared by AFME and submitted with this response.

APPENDIX 2

CRA Credit Performance Reports

DBRS Ratings	European SF Outlooks and European SF year review • https://www.dbrsmorningstar.com/research/372937/european-structured-finance-outlook-2021 • https://www.dbrsmorningstar.com/research/372013/european-structured-finance-2020-year-in-review • https://www.dbrsmorningstar.com/research/355463/european-structured-finance-2019-year-in-review
DBRS Ratings	Commentary on payment holidays • https://www.dbrsmorningstar.com/research/374485/payment-holiday-impact-on-european-structured-finance
DBRS Ratings	RMBS commentary 2021 on property market performance and COVID Adjustments (2021): • https://www.dbrsmorningstar.com/research/380094/the-impact-of-covid-19-on-european-mortgage-performance-one-year-on
DBRS Ratings	Commentary on retail properties and hotels in CMBS (2020): • https://www.dbrsmorningstar.com/research/357906/coronavirus-covid-19-impact-negative-in-the-short-term-for-uk-cmbs-backed-by-hotel-assets
DBRS Ratings	Interview with SCI on views for UK RMBS outlook: • Unanswered questions | Residential mortgage backed securities (RMBS) | Structured Credit Investor
DBRS Ratings	Newsletter – Illustrative Insights – UK Mortgage Lending (pdf attached)
DBRS Ratings	Commentary – UK Unemployment Focused in Generation Rent, Mortgage Impact Likely Limited (pdf attached)
DBRS Ratings	Commentary – UK Cladding Much More Than a Safety Hazard (pdf attached)
DBRS Ratings	Newsletter – Illustrative Insights – UK House Prices (pdf attached)
Moody's	Performance of UK securitisations since the Global Financial Crisis • Impairment and loss rates EMEA structured finance securities – June 2021 • RMBS — EMEA Post-crisis securitisations benefit from lower-risk loans and stronger structures Oct 2019

	• European ABS and RMBS: Historical Resilience Will Continue Beyond 2014 June 2014
Moody's	Performance of UK securitisations since the onset of Covid 19: commentary on payment holidays, stresses seen across various asset classes etc • RMBS and ABS – EMEA Collateral outperforming previous expectations as economies improve July 2021 • RMBS and ABS – EMEA Coronavirus performance monitor — a year in review June 2021 • Covered Bonds and RMBS – UK Low arrears after payment holidays is positive, but risks will arise when government support ends March 2021 • RMBS – United Kingdom Shape of coronavirus related downturn will determine mortgage defaults' effects on securitisation notes July 2020 • Auto ABS – EMEA Structural features will continue to mitigate effects of pandemic on vast majority of deals July 2020 • ABS – Europe Structural mitigants reduce coronavirus fallout on consumer and credit card deals May 2020
Moody's	General research on UK securitisations: • Structured Finance — United Kingdom Strong portfolio fundamentals mitigate performance effects of a no-deal Brexit March 2019 • Structured Finance – Europe Structured finance is a relevant source of funding for the economy Feb 2021
S&P Global Ratings	Global Structured Finance • Charting the recovery from Covid-19