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for securitisation
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Dear Sir / Madam

General Comments

Prime Collateralised Securities ("PCS") is grateful for the opportunity provided by the European Banking Authority to comment on the proposed guidelines and recommendations regarding the criteria for STS status. We agree with the EBA's general approach regarding the need for such recommendations and guidelines in view of the vagueness of many (but not all) of the criteria. We also wish to express our support for the EBA's work so far and commend them on a constructive, sophisticated and sensible approach to filing in the gaps in the level 1 text.

In seeking to respond to the EBA's consultation, we have grounded our comments on two overarching principles. We do not believe that these are contentious.

First, the STS regime seeks to identify securitisations which may be analysed with a high degree of certainty. This is to be achieved by structural simplicity and transparency. The STS regime is not designed to deal with credit risk *per se* but with an investor's and regulator's capacity to understand that credit risk at whatever level it may be set. It follows that the STS criteria as they appear in the level 1 text should not be read as seeking to improve the credit of STS securitisations or remedy specific credit weaknesses. They should be read as insuring that whatever level of credit risk is borne through an STS securitisation, that level is understandable and capable of sensible analysis by an investor or a prudential regulator. It follows that guidelines for interpreting the level 1 text should not, therefore, seek to improve the credit quality *per se* of transactions.

Secondly, taking into account the uncertainty of many of the STS criteria, the recommendations and guidelines should be drafted in such a way as to allow issuers, investors and third party certification agents to look at any given securitisation and determine whether it does or does not fall within the STS category. PCS acknowledges that this can never be a perfect process and that it is unavoidable that some marginal cases will still require a judgment call by market participants. However, these should only be rare and exceptional cases. As a general rule, it must be possible to place a structural feature of a securitisation next to the recommendation and guideline and conclude that the latter allows one to determine whether the former meets the relevant level 1 criterion.

Specific Responses

Article 20(1): The title to the underlying exposures shall be acquired by the SSPE by means of a true sale or assignment or transfer with the same legal effect in a manner that is enforceable against the seller or any other third party. The transfer of the title to the SSPE shall not be subject to severe clawback provisions in the event of the seller's insolvency.

Article 20(2): For the purpose of paragraph 1, any of the following shall constitute severe clawback provisions:

(a) provisions which allow the liquidator of the seller to invalidate the sale of the underlying exposures solely on the basis that it was concluded within a certain period before the declaration of the seller's insolvency;

(b) provisions where the SSPE can only prevent the invalidation referred to in point (a) if it can prove that it was not aware of the insolvency of the seller at the time of sale.

Article 20(3): For the purpose of paragraph 1, clawback provisions in national insolvency laws that allow the liquidator or a court to invalidate the sale of underlying exposures in the case of fraudulent transfers, unfair prejudice to creditors or transfers intended to improperly favour particular creditors over others shall not constitute severe clawback provisions.

Article 20(4): Where the seller is not the original lender, the true sale or assignment or transfer with the same legal effect of the underlying exposures to that seller, whether that true sale or assignment or transfer with the same legal effect is direct or through one or more intermediate steps, shall meet the requirements set out in paragraphs 1 to 3.

Article 20(5): Where the transfer of the underlying exposures is performed by means of an assignment and perfected at a later stage than at the closing of the transaction, the triggers to effect such perfection shall include at least the following events:

(a) severe deterioration in the seller credit quality standing;

(b) insolvency of the seller; and

(c) unremedied breaches of contractual obligations by the seller, including the seller's default.

Q1. Do you agree with the interpretation of these criteria, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

PCS agrees with the interpretation of "true sale" as a legal device by which a property right over assets is moved from the originator to the SSPE in such a way that, upon an insolvency of the originator, those assets will not be considered as falling within the estate of the originator.

In paragraph 10.b, there is a requirement that the legal opinion should cover commingling risks and set-off risks. Although legal opinions routinely do so, these risks are not related to the issue of "true sale". The rationale in the context of STS for wishing to have a "true sale" is that investors should analyse the risks of a transaction based on what can happen to the assets. That is the very essence of a securitisation. Without "true sale", the securitisation is, as a matter of law and fact, merely a secured financing subject to all the rules of insolvency as they relate to the originator. An STS securitisation needs therefore to contain a "true sale" as, without it, it is not even a securitisation. This is not the case for commingling risk and set-off risk. These are asset level risks. As other asset level risks they may be covered by any number of structural devices or left uncovered. In the latter case, the investor – so long as those risks are disclosed properly – will factor them as asset level risks in its general credit analysis.

It is therefore not appropriate to require legal opinions to deal with commingling and set-off risks as part of a level 1 criterion requiring "true sale".

In paragraph 13, the requirement to make legal opinions public appears dramatically to widen the liability of law firms. Although the extension of liability may be capable of being limited in certain European jurisdictions, PCS has received advice that it may not be in many others. Since a third party may always purchase a securitisation through a vehicle set up in a jurisdiction allowing wide liability for public legal opinions, this would appear to expose law firms to substantial risk.

It is not for PCS to make the law firms' arguments for them, but we fear that law firms may well elect either substantially to reduce the contents of their opinions or pull out of the securitisation market altogether. It seems that the EBA should only risk such disproportionate impact if it was strictly necessary. We are not convinced that it is. It would seem that it is sufficient for the originator and, if one is used, the third party certification agent to have sight of the opinion. The issuer could then provide a representation that it had read such an opinion and that the opinion dealt with the required issues. This is, in effect, what is envisaged for securitisations where the assets were subject to one or more prior sales before being securitised.

Also, if the pool of assets has been subject to more than one transfer, it is possible that the originator did not get to see a true sale opinion for the earlier transfers. It is also possible that no such opinion was produced. The guidelines should make it clear that it is then possible for the originator to commission a new legal opinion covering the earlier transfers and acknowledge that such opinions may have a more limited scope if the lawyers were not able to have sight of all the relevant documents (e.g. where the originator acquires the portfolio from a seller that had itself purchased it from an earlier holder).

Q2. Do you agree with the clarification of the conditions to be applicable in case of use of methods of transfer of the underlying exposures to the SSPE other than the true sale or assignment? Should examples of such methods of such transfer be specified further?

With respect to paragraph 11, "true sale" is not a legal term of art and covers all legal devices that achieve the above. Therefore, as a technical matter, it is somewhat confusing and inaccurate to speak of a form of transfer that is not a "true sale" but achieves the same effect. Also, although commonly used by English lawyers, the distinction between "sale" and "assignment" is redundant and, in the context of non-English or Irish legal regimes, more confusing than helpful.

PCS would suggest therefore some drafting changes to paragraph 11(a) along the following lines:

"for the purposes of Article 20(1) of Regulation (EU) 2017/2402, where the title to the underlying exposures is not acquired by the SSPE by means of a ~~true~~ sale ~~or assignment~~, a legal opinion should be provided which confirms and provides evidence that the transfer has the same legal effect as a ~~true~~ sale ~~and~~ namely that the segregation of the underlying exposures from the seller, its creditors and liquidators including in the event of the seller's insolvency is consistent with a ~~equal to that achieved by means of~~ "true sale" ~~or assignment~~, under the applicable national legal framework governing the securitisation transaction;"

Paragraph 11.b deals with assignments that are perfected at a later stage. However, there is no guidance as to the meaning of "unperfected assignments" in the context of STS. PCS believes that this term may cover a variety of legal devices and, absent clarification, our second principle of certainty will not be met. To understand what we believe is covered by "unperfected assignments" one should take into account where this term appears in the Regulation, namely in the "true sale" criterion. Basically, logic would seem to require one to interpret this expression as covering structures where the assets are subject to some legal event upon which they remain in the estate of the originator and only leave it to become part of the estate of the SSPE upon another later event or action. The classic case of this would be the "conditional sale" where an asset is conditionally sold so that it remains the property of the seller until a subsequent event e.g. a default of the seller on a loan. Upon that subsequent event the property of the asset passes automatically to the buyer.

The prohibition of such types of conditional sales from STS makes a lot of sense since the interaction of these types of legal devices with insolvency law is often complex and produces uncertain effects. This endangers the "true sale", thus explaining why this requirement appears in the "true sale" part of the STS criteria.

Therefore, the definition of assignments to be perfected at a later stage should ***not*** include assignments where there is no doubt that title passes to the SSPE on the closing of the securitisation and where the securitised assets cannot be claimed back by the insolvency officer of the originator. So, it should ***not*** include un-notified assignment or equitable assignments under English or Irish law or other trust like arrangements.

PCS strongly recommends that this be made clear in the recommendations and guidelines.

This point is particularly important for institutions such as UK building societies where being legal – as distinguished from equitable – borrower gives the mortgage borrowers membership rights. To require notice to be given and the equitable transfer to become a legal transfer will automatically impact these membership rights. Such an outcome should only be contemplated if the STS Regulation absolutely requires it. For the reasons set out above, PCS is of the view that it does not.

Paragraph 10.b also requires the legal opinion confirms that there are "material obstacles" to effecting a perfected rather than unperfected assignment.

First, we anticipate serious practical problems with this test. Lawyers can describe the law but they cannot determine whether an obstacle is "material" and so are unlikely to opine on this issue. Furthermore, materiality is a subjective concept. Is a Euro 25,000 tax a "material obstacle"? Maybe not for a huge international financial institution but maybe it is for a new internet based lender. How does an issuer and/or a third party certification agent determine this materiality? It cannot be a different threshold depending on the originator as this goes against the very nature of the STS project. But then how can materiality be determined? This approach does not appear consistent with our principle of certainty.

Secondly, the co-legislators, by drafting Article 20(5), have allowed unperfected assignments as part of the STS regime. In other words, provided it meets the additional 20(5) requirement, a securitisation may be STS with an unperfected assignment. That is where the co-legislators set the bar in the level 1 text. PCS is therefore not convinced that the EBA may shift that bar based on the motives of originators. The proposed requirement would seem to suggest that if an originator structures an STS securitisation with an unperfected assignment for what the regulator deems to be "good reasons" the transaction may be STS. But if another originator in another jurisdiction structures exactly the same securitisation but without what the regulators determine is a good enough reason, the same securitisation may no longer achieve STS status. We feel this goes beyond the remit of interpretation and produces the perverse effect of identical transactions being treated differently for STS.

For these reasons, we would encourage the removal of this requirement in paragraph 10.b.

Q3. Do you believe that in addition to the guidance provided, additional guidance should be provided on the application of Article 20(2)? If yes, please provide suggestions of such severe clawback provisions to be included in the guidance.

No. However, if this is appropriate, we would welcome the EBA inviting each national competent regulator to publish as soon as possible their assessment of whether there are, in their view, severe clawback provisions in force in their jurisdiction. This would be most helpful.

PCS cannot think of other types of provisions that would fall in this category.

Q4. With respect to the interpretation of the criterion in Article 20(5), should the severe deterioration in the seller credit quality standing, and the measures identifying such severe deterioration, be further specified in the guidelines? Do you believe that the interpretation should refer to the state of technical insolvency (i.e. state where based on the balance sheet considerations the seller reaches negative net asset value with its the liabilities being greater than its assets, without taking into account cash flows or events of legal insolvency), and if it be considered as the trigger effecting perfection of transfer of underlying exposures to SSPE at a later stage?

Paragraph 14 requires that credit quality thresholds related to the financial health of the seller are “generally used and recognised by market participants”. If this is a reference to ratings, this leaves great question marks in the case of any unrated sellers. For such sellers, this test is not consistent with the principle of certainty. This test refers not to securitisation concepts but to tests used presumably by lenders generally to assess the health of corporate borrowers. As such, it requires investors and third party certification agent to determine the types of covenants used by syndicated lenders and funds in the loan markets. It requires them to track these over time since these tests are notoriously subject to market sentiment. It would lead to different test being applied to different types of borrower in different industries, jurisdictions, etc… Investors and third party certification agents would then have to determine whether these particular thresholds are “generally used” despite many of the transactions where such thresholds are used being private. This is not realistic.

PCS suggests replacing “generally used and recognised by market participants” by “objective and capable of assessment based on public information or information agreed to be provided to investors by the originator".

PCS does not think that technical insolvency should be specified as mandatory.

Article 20(6)

The seller shall provide representations and warranties that, to the best of its knowledge, the underlying exposures included in the securitisation are not encumbered or otherwise in a condition that can be foreseen to adversely affect the enforceability of the true sale or assignment or transfer with the same legal effect.

Q5. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

The interpretation appears to require that, in case of a pool that was not originated by the seller, the originator provides the seller with these warranties. However, the seller may not have received such representations and warranties from the originator (or any intermediate owner of the assets) for any number of reasons. For example, the originator may have elected to conduct its own due diligence rather than rely on representation from an insolvent entity (in cases where the pool was purchased out of a bankruptcy). To insist that only where such representations were historically provided can a securitisation be STS would punish sellers who had legitimately elected to become comfortable with the legal status of the securitised assets in another way. Also, the value of the requirement is somewhat dubious since there is no way to differentiate between representations given to the originator in good faith by a solid originator and representations given by a shell vehicle with no assets and no interest in their veracity.

More importantly, this requirement seems to go beyond level 1 that only requires the seller to provide representations and warranties. This does not appear to be an interpretation as much as an additional requirement. We would question whether it falls properly within the scope of recommendations and guidelines.

As a more technical matter and dealing with a very narrow issue, we note that in the case of motor vehicles, these may be encumbered by operation of law as a result of liens when the vehicle is sent to a garage for work. (The garage may keep the vehicle until the repairs are paid for.) In cases where the vehicles are sold to the SSPE and could be deemed to be part of the underlying exposures, it would be useful to clarify that such transient encumbrances do not offend against this criterion.

Article 20(7) The underlying exposures transferred from, or assigned by, the seller to the SSPE shall meet predetermined, clear and documented eligibility criteria which do not allow for active portfolio management of those exposures on a discretionary basis. For the purpose of this paragraph, substitution of exposures that are in breach of representations and warranties shall not be considered active portfolio management. Exposures transferred to the SSPE after the closing of the transaction shall meet the eligibility criteria applied to the initial underlying exposures.

Q6. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

Paragraph 20

PCS strongly agrees with this approach.

Paragraph 21

PCS agrees with this approach.

An issue does, however, arise in respect of the master trust securitisations where assets have been added to the pool over many years. Article 20(7) is designed to insure that an investor in an STS securitisation is able to analyse the assets on which it depends for repayment. This is obviously not possible if, through substitution, the originator is able negatively to change the fundamental characteristics of the asset pool *after* the investor has agreed the underwriting ground rules.

In the context of master trusts where assets have been added over sometimes decades based on different underwriting criteria, it would be unfair and unnecessary to require that any assets added after an investor has purchased a newly issued STS securitisation out of a master trust should be on the same eligibility criteria as the assets transferred on the very first transaction. The aims of the legislation are fully met if, before purchasing its first STS securitisation out of a master trust, the investor is made aware of the eligibility criteria which will henceforth set the quality floor on the assets on which that investor relies for repayment.

Therefore, PCS would welcome a clarification that, in the case of master trusts, the originator may, at the time of issuance of the first STS securitisation out of that master trust, “reset the clock” by setting out the eligibility criteria that will henceforth apply to the trust. This would allow any STS investor to understand both what the master trust currently contained and what the baseline eligibility criteria would be going forward, thus fulfilling the aims of the criterion.

Q7. Do you agree with the techniques of portfolio management that are allowed and disallowed, under the criterion of the active portfolio management? Should other techniques be included or excluded?

Paragraph 19

PCS does not think it wise to set out a prescriptive list of allowed types of asset substitution or addition, since there may be (and are) many different reasons why assets may be removed from a securitised pool which do not amount to active portfolio management. For example, in some transactions, assets may be re-transferred to the seller once they are defaulted so as to allow for judicial proceedings to be conducted for their recovery: only the owner can start judicial proceedings against the defaulting debtor and it is not sensible to have an SSPE with no staff become involved in litigation. It is probably impossible to come up with a definitive list of all the situations where legitimate substitutions and additions may take place that do not amount to active portfolio management.

Therefore, we would recommend the deletion on paragraph 19(a). Some guidance should nevertheless be provided and so we would suggest that the recommendation focus on the difference between substitutions and additions designed to achieve economic and financial benefits (the active portfolio management which the criterion seeks to capture) and those that deal with issues with the securitised assets.

PCS would therefore recommend adding a paragraph 18(d) to cover explicitly the repurchase of defaulted receivables and a new paragraph 18(e) covering any substitution that may take place due by objective legal or regulatory reasons relating to the assets.

Paragraph 19(b) should then be kept. However, since active portfolio management may be conducted for the benefit of parties other than the investor, we would suggest amending “increased investor yield” by “increased yield, overall financial returns or other purely financial benefit”.

Article 20(8)

The securitisation shall be backed by a pool of underlying exposures that are homogeneous in terms of asset type, taking into account the specific characteristics relating to the cash flows of the asset type including their contractual, credit-risk and prepayment characteristics. A pool of underlying exposures shall comprise only one asset type. The underlying exposures shall contain obligations that are contractually binding and enforceable, with full recourse to debtors and, where applicable, guarantors.

The underlying exposures shall have defined periodic payment streams, the instalments of which may differ in their amounts, relating to rental, principal, or interest payments, or to any other right to receive income from assets supporting such payments. The underlying exposures may also generate proceeds from the sale of any financed or leased assets.

The underlying exposures shall not include transferable securities, as defined in point (44) of Article 4(1) of Directive 2014/65/EU, other than corporate bonds that are not listed on a trading venue.

Q8.
Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

PCS strongly agrees and welcomes the interpretations set out in paragraphs 22 to 24.

Q9.
Do you believe that additional guidance should be provided in these guidelines with respect to the homogeneity requirement, in addition to the requirements specified in the Delegated Regulation (EU) 2018/.... further specifying which underlying exposures are deemed homogeneous?

No.

Article 20(10)

The underlying exposures shall be originated in the ordinary course of the originator's or original lender's business pursuant to underwriting standards that are no less stringent than those that the originator or original lender applied at the time of origination to similar exposures that are not securitised. The underwriting standards pursuant to which the underlying exposures are originated and any material changes from prior underwriting standards shall be fully disclosed to potential investors without undue delay.

In the case of securitisations where the underlying exposures are residential loans, the pool of loans shall not include any loan that was marketed and underwritten on the premise that the loan applicant or, where applicable, intermediaries were made aware that the information provided might not be verified by the lender.

The assessment of the borrower's creditworthiness shall meet the requirements set out in Article 8 of Directive 2008/48/EC or paragraphs 1 to 4, point (a) of paragraph 5, and paragraph 6 of Article 18 of Directive 2014/17/EU or, where applicable, equivalent requirements in third countries.
The originator or original lender shall have expertise in originating exposures of a similar nature to those securitised.

Q10. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

PCS agrees with the approaches set out in paragraphs 25 to 27.

PCS also agrees with the approaches set out in paragraphs 30 to 33.

On paragraph 28 and 29 relating to the disclosure of changes to underwriting criteria, PCS has always assumed that this criterion applies to new assets added to the securitisations by way of replenishment. Notwithstanding the odd drafting of the level 1 text, with any other interpretation it is difficult to see how, for example, a lender in the consumer loan business for a century could disclose all the changes in underwriting standards since the early 20th century. Such an interpretation is also difficult to understand as it is not clear why all the changes in past underwriting standards are relevant to an investor. Finally, this can be the only meaning of "without undue delay" since originators cannot be required to inform unknown future investors in a not yet conceived putative future securitisation of underwriting changes without undue delay.

PCS acknowledges the EBA's attempt to adopt both interpretations i.e. retrospective *and* prospective. PCS also notes that to do so and make sense of the retrospective interpretation the EBA must introduce an arbitrary time limit not present in the level 1 text.

We do not believe this is the intent of the legislation and that, difficult as we accept the task to be, it is incumbent on the EBA to select the most rational interpretation rather than to seek to reconcile two arguable but incompatible interpretations. We therefore strongly recommend that only paragraph 28(b) be retained.

On paragraphs 34 to 36 relating to third country regimes, for reasons of comity and sense, PCS believes this provision should be met when loans are originated in accordance with local rules.

Comity since otherwise the originator and regulator would need to do a full equivalence analysis in each case. This is not sensible for an originator as the assessment of equivalence is a political and regulatory process which neither the originator nor its advisers (nor a third party certification agent or its advisers) are qualified to perform. This is not sensible for a regulator as this would involve the regulator in a politically sensitive field which is the domain of the European Commission and the co-legislators.

Sense since, otherwise, assets originated under strict regimes would not be STS eligible if the regimes are not identical to those of the EU but assets originated in countries with no rules at all would be STS eligible. This cannot be a correct reading of this provision.

PCS therefore strongly suggests that "equivalent" be interpreted as "covering the same topics".

Q11. Do you agree with this balanced approach to the determination of the expertise of the originator or original lender? Do you believe that more rule-based set of requirements should be specified, or, instead, more principles-based criteria should be provided? Is the requirement of minimum of 5 years of professional experience appropriate and exercisable in practice?

PCS agrees with the approach set out in paragraphs 37 to 39.

As a point of detail, the EBA may wish to clarify that references to "members of the management body" is a reference to "members of the management body with oversight or responsibility for the relevant lending" since it would be odd to expect all the members of the management body of a large international financial institution to have expertise in say credit card origination.

Q12. Should alternative interpretation of the "similar exposures" be provided, such as, for example, referencing the eligibility criteria (per Article 20(7)) that are applied to select the underlying exposures? Similar exposure under Article 20(10) could thus be defined as an exposure that would qualify for the portfolio, based on the exposure level eligibility criteria (not portfolio level criteria) which has not been selected for the pool and which was originated at the time of the securitised exposure (e.g. an exposure that has repaid / prepaid by the time of securitisation). Similar interpretation could be used for the term "exposures of a similar nature" under Article 20(10), and "substantially similar exposures" under Article 22(1). The eligibility criteria considered should take into account the timing of the ach would be more appropriate in providing clear and objectively determined interpretation of the "similarity" of exposures.

See our response to Q10.

Article 20(11)

The underlying exposures shall be transferred to the SSPE after selection without undue delay and shall not include, at the time of selection, exposures in default within the meaning of Article 178(1) of Regulation (EU) No 575/2013 or exposures to a credit-impaired debtor or guarantor, who, to the best of the originator's or original lender's knowledge:

(a) has been declared insolvent or had a court grant his creditors a final non-appealable right of enforcement or material damages as a result of a missed payment within three years prior to the date of origination or has undergone a debt-restructuring process with regard to his non-performing exposures within three years prior to the date of transfer or assignment of the underlying exposures to the SSPE, except if:

(i) a restructured underlying exposure has not presented new arrears since the date of the restructuring, which must have taken place at least one year prior to the date of transfer or assignment of the underlying exposures to the SSPE; and

(ii) the information provided by the originator, sponsor and SSPE in accordance with points (a) and (e)(i) of the first subparagraph of Article 7(1) explicitly sets out the proportion of restructured underlying exposures, the time and details of the restructuring as well as their performance since the date of the restructuring;

(b) was, at the time of origination, where applicable, on a public credit registry of persons with adverse credit history or, where there is no such public credit registry, another credit registry that is available to the originator or original lender; or

(c) has a credit assessment or a credit score indicating that the risk of contractually agreed payments not being made is significantly higher than for comparable exposures held by the originator which are not securitised.

Q13. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

PCS agrees with the approaches set out in paragraphs 40 and 41.

Q14. Do you agree with the interpretation of the criterion with respect to exposures to a credit impaired debtor or guarantor?

PCS has expressed on record its interpretation of the credit impaired criterion (see STS Interpretations for STS Reports – page 12). We note that the EBA has chosen to adopt another.

Based on the approach chosen by the EBA and assuming that the EBA does not revert to the approach suggested originally by PCS, PCS does support the position taken in paragraph 42.

With regard to paragraph 43 setting out that the lack of credit-impairment must be met at the time of pool selection, we draw the attention of the EBA to the drafting of Article 20(11)(b). The issue of whether a borrower has an adverse entry on a credit registry is to be determined at the time of origination. Based on the use of this expression throughout the legislation, it is clear that this means at the time of the origination of the asset. Therefore, to avoid any confusion, we would urge the EBA to clarify that credit registry entries are only relevant at the time the credit is granted and not at the time the securitisation pool is selected.

Also with regard to paragraph 43, the only purpose of seeking a guarantor is if the lender believes there may be some credit impairment of the borrower. The

STS criterion is designed to ensure simplicity of analysis for investors and to prevent sub-prime lending from being STS. Clearly the fact that the credit of the securitisation is dependent on credit worthy/"prime" guarantors means that the requirement is met. Therefore reading level 1 as requiring *both* the borrower and the guarantor not to be credit impaired is incompatible with the purpose of the legislation.

Such a reading also is profoundly illogical. If the borrower is credit impaired and one is to ignore for these purposes the credit quality of the guarantor for STS, then the addition of the guarantor in the legislation is utterly pointless. The only situation where the addition of the guarantor to the legislation would add anything whatsoever, based on this reading, is to exclude cases where you had credit worthy borrowers guaranteed by credit impaired guarantors. But if the borrower is credit worthy the credit of the guarantor is irrelevant. This cannot possibly be the reason the co-legislators added a provision about guarantors. The *only* rational interpretation of this provision is to require that, if your borrowers are credit impaired, STS requires credit worthy guarantors.

PCS agrees with paragraphs 44 and 45, subject to our first comment on paragraph 43.

PCS welcomes the EBA's approach as outlined in paragraphs 47 and 48 on credit registry entries. If we understand this correctly, the EBA acknowledges that not all borrowers with a negative entry in a credit registry are necessarily "credit impaired" – as illustrated by the example given in paragraph 48. However, bearing in mind the principle of certainty set out in our general comments, PCS feels that more substantial guidance is required.

The EBA, in these paragraphs, indicates that a line needs to be drawn, within the category of borrowers with negative entries in a credit registry between those whose entries make them "credit impaired" (adverse credit status) and those whose entries do not. Unfortunately, the EBA does not give any guidance as to how or where that line should be drawn. PCS accepts that the variety of registries across Europe make a complete set of rules as to where to draw that line in each case extremely onerous. This could also be seen to encroach on the responsibilities and areas of expertise of the national competent authorities. Nevertheless, we would urge the EBA in the strongest terms to provide further clarification of the principles to be used when drawing the relevant line.

PCS would suggest that a sensible principle would be to exclude from the category of "credit impaired" borrower any of a credit standing such that it would have been able to obtain a similar loan or credit facility on roughly similar terms from most traditional lenders out of their everyday lending platform. Such a debtor cannot in any reasonable sense of the word be considered "credit impaired" and it could not have been the aim of the co-legislators to exclude from STS the normal everyday lending of main street banks to their normal client base. Stating this in the guidelines would go a long way to allowing issuers, investors and third party certification agents to make sensible decisions with regard to this criterion.

Paragraph 49 on comparable exposures provides the necessary clarity and seems sensible.

Paragraph 50 on significantly higher credit scores remains extremely vague and does not really give any guidance that would assist an originator or a third party certification agent in determining when the criterion has been met. PCS strongly urges the EBA to provide guidance that this criterion be deemed to be met when the securitised pool has been selected from the wider pool of non-securitised assets through a random selection algorithm. The guidance could specify that some assets may be manually removed from the randomly selected pool only if this improves the quality of the pool (eg to meet the other provisions of the Article 20(11) requirements).

Q15. Do you agree with the interpretation of the criterion with respect to the exposures to credit-impaired debtors or guarantors that have undergone a debt-restructuring process?

PCS has no strong views on paragraph 46.

Article 20(12)

The debtors shall, at the time of transfer of the exposures, have made at least one payment, except in the case of revolving securitisations backed by exposures payable in a single instalment or having a maturity of less than one year, including without limitation monthly payments on revolving credits.

Q16. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

PCS agrees with the approach set out in paragraphs 51 and 52.

Article 20(13)

The repayment of the holders of the securitisation positions shall not have been structured to depend predominantly on the sale of assets securing the underlying exposures. This shall not prevent such assets from being subsequently rolled-over or refinanced.

The repayment of the holders of the securitisation positions whose underlying exposures are secured by assets the value of which is guaranteed or fully mitigated by a repurchase obligation by the seller of the assets securing the underlying exposures or by another third party shall not be considered to depend on the sale of assets securing those underlying exposures.

Q17. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be

amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

PCS is concerned that the requirement in paragraph 53(b) is very ill defined. Without further clarification as to the meaning of “materiality” it will be difficult for issuers, investors or third party certification agents to come to a sensible view as to whether this criterion is met. Also, this requirement would need to differentiate between types of assets and their inherent liquidity. In other words, there is a substantial difference between selling 1000 second hand high quality cars and selling 100 large pieces of excavating equipment in a couple of months. If the EBA wishes to keep this requirement, it should provide more guidance and this guidance should state that reasonable account should be taken of the liquidity of the relevant assets to be sold or refinanced.

On the granularity requirement, PCS has in the past commissioned some work from academic researchers on the impact of granularity on credit risk. As a point of information, the academic research suggested that 500 would be a much higher number than required to get diversification. That said, some granularity requirement feels appropriate and PCS has no strong objection to 500 being the number chosen although we would also not object if a smaller number, such as 250, was selected.

The requirement for a rating for the provider of the repurchase agreement in paragraph 55 seems to go well beyond an interpretation of the level 1 text where there is no reference to the credit of such provider. There are also a number of objections of principle to this approach.

First, the requirements for eligibility as provider of unfunded credit protection are designed to meet a completely different prudential requirement. To tether the STS rules to a totally different set of changing rules and have STS eligibility dependent on regulatory rule making made for a different purpose makes STS a hostage to extraneous considerations. This seems to us extremely unwise.

Secondly, the STS rules were explicitly designed not to be ratings and credit based. By requiring that repurchase obligation providers meet these extraneous rules, the EBA would be reintroducing ratings into the STS after the co-legislators rejected such an approach. In addition, bearing in mind our comment on the purpose of STS in our general comments section, this interpretation appears to seek to improve the credit of STS transactions rather than insure their simplicity and transparency.

Thirdly, and as a corollary to our second point, what would happen if the provider of the repurchase obligation were to be downgraded? Would the securitisation cease to be STS? This type of cliff effect based on downgrade action by rating agencies would be very damaging to the STS regime and would also go against the clear intentions of the co-legislator since the crisis to diminish market damage caused by CRA actions.

PCS accepts the EBA may wish to prevent abuse of the rule by originators setting up empty shell vehicles to provide the repurchase agreement. Such abuse prevention is legitimate for the regulatory authorities even in the absence of language in the level 1 text. However, this could be achieved by requiring that the entity providing the repurchase agreement cannot be a special purpose vehicle set up solely to provide such service and must be a real entity with a genuine business.

Q18. Do you agree with the interpretation of the predominant dependence with reference to 30% of total initial exposure value of securitisation positions? Should different percentage be set dependent on different asset category securitised?

As a matter of linguistics, “predominantly” means substantially more than half. The Oxford English Dictionary defines it as “mainly, for the most part”. Therefore it is difficult to see how less than a third could ever by “for the most part”. As such we cannot agree that 30% is the appropriate number or reflective of the level 1 text.

When looking at a similar issue in the context of the PCS Label, PCS selected 65%.

Article 21(2)

The interest rate and currency risks arising from the securitisation shall be appropriately mitigated and any measures taken to that effect shall be disclosed. Except for the purpose of hedging interest-rate or currency risk, the SSPE shall not enter into derivative contracts and shall ensure that the pool of underlying exposures does not include derivatives. Those derivatives shall be underwritten and documented according to common standards in international finance.

Q19. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

PCS agrees with the general approach outlined in paragraph 56.

With regard to paragraph 57, PCS is not sure why hedging counterparties should be limited to the list set out in c. Surely, it is better for investors to have as a hedge counterparty a highly rated corporation in a highly rated solvent nation than a non-investment grade impaired financial institution in an insolvent nation.

Equally, as a matter of principle, it is not clear why the requirement for counterparty replacement in d. would not apply to public bodies. Recent history has demonstrated that public bodies default on debt obligations. If STS requires hedging that is replaced as the counterparty moves toward insolvency, we are at a loss to understand why this would not apply to all counterparties.

Finally, PCS has no objections to the requirements set out in e. but suggests that, to avoid onerous additional requirements, the EBA may wish to set out more clearly what is expected. PCS would hope that it is just a few lines explaining when the hedges cease to cover the risk.

With regard to paragraph 58(a), PCS believes that this needs to be clarified. As set out in paragraph 56, it is possible to provide hedging in a variety of ways and the law does not seek to limit the breadth of hedging options, so long as they appropriately hedge. One traditional way of hedging is by using overcollateralisation or reserve accounts. It cannot be the case that these would not be allowed in STS because if overcollateralisation is used for one purpose it may not be used for another. We urge the EBA to clarify that it is possible to use the same method for more than one purpose but that the proportion used for hedging and the proportion used for other purposes must be specified upfront. If this is so, we cannot see how this would make the analysis by an investor any more complex than if two separate methods were used.

PCS cannot see the justification for paragraph 58(b) and the requirement that the hedging be fully funded and available at all time. First, this is inconsistent with paragraph 56 and 57. The EBA clearly allows hedging to be done via a swap. Under a swap, a counterparty agrees to provide cash to the SSPE in certain circumstances. This is an unfunded contractual payment obligation. If unfunded contractual payment obligations are sufficient to make a hedge appropriate for STS when they are entered under an ISDA swap agreement, what can be the rationale for stating that they cannot be sufficient if the contract is not a swap but, say, a liquidity facility? Secondly, swaps are conditional agreements. They only require payments when certain events occur (ie fx rates hit a certain point). So swaps are not “available at all time”. Again it is inconsistent to require that other non-swap hedging be available at times when the models clearly show, for whatever reason, that the hedges are not required.

As a general matter, almost no securitisation in Europe in the last decade or more has ever been substantially un-hedged. The investors and rating agencies have satisfied themselves over many transactions that appropriate hedges were in place even if they did not meet the requirements of paragraph 58. PCS does not believe that the co-legislators wished, through the level 1 text, to impose a higher hedging standard than that accepted by the rating agencies and the investor community. We fear that paragraph 58 very much would do that.

PCS agrees with paragraph 59 for the outset of the transaction but believes the requirement to provide continuous updates is unnecessary and overly onerous. The logic of the STS architecture is that appropriate hedges need to be provided on day one. We do not believe that the level 1 text requires or implies that the appropriateness must be continuously updated. Clearly, the law allows imperfect hedging for STS transactions. We also believe that the law expects that once a transaction is STS it shall remain so unless the originator violates one of the ongoing requirements (eg disclosure). It is not compatible with STS that a securitisation should lose its status if market conditions stretch the hedging. This would make STS dependent on market fluctuations: at a certain f/x rate, the securitisation could lose its STS status to regain it two weeks later when f/x rates reversed. But if this is not the intention – and it should not be - then there is little point in asking originators to provide updates.

PCS agrees with the approaches set out in paragraphs 60 and 61.

Article 21(3)

Any referenced interest payments under the securitisation assets and liabilities shall be based on generally used market interest rates, or generally used sectoral rates reflective of the cost of funds, and shall not reference complex formulae or derivatives.

Q20. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

PCS agrees with the approach set out in paragraphs 62 and 63.

To avoid any confusion though, it would be most useful if the EBA could confirm that "referenced" interest payments mean interest rates calculated "by reference" to another rate. Therefore, unreferenced rates – such as a bank's self-set mortgage rate - are not covered by this criterion

Article 21(4)

Where an enforcement or an acceleration notice has been delivered:

(a) no amount of cash shall be trapped in the SSPE beyond what is necessary to ensure the operational functioning of the SSPE or the orderly repayment of investors in accordance with the contractual terms of the securitisation, unless exceptional circumstances require that an amount be trapped to be used, in the best interests of investors, for expenses in order to avoid the deterioration in the credit quality of the underlying exposures;

(b) principal receipts from the underlying exposures shall be passed to investors via sequential amortisation of the securitisation positions, as determined by the seniority of the securitisation position;

(c) repayment of the securitisation positions shall not be reversed with regard to their seniority; and

(d) no provisions shall require automatic liquidation of the underlying exposures at market value.

Q21. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

PCS agrees with the approaches set out in paragraphs 64 to 69.

In paragraph 66, we would suggest adding to "trustee" the words: "or other representative of the investors" to cover jurisdictions where other entities play this role. Also, where there are no such representatives or where they may be overruled by the investors, it may be useful to add at the end of the paragraph: "or by the investors in accordance with the voting provisions set out in the documentation".

In paragraph 67, we would suggest removing the words "in the next payment period" as it may be that cash is kept back to pay investors over a longer period.

We are not entirely sure what paragraph 70 is saying. We assume it means that the investors' decision to liquidate should not be deemed to be an "automatic liquidation". If this was indeed the meaning of the provision, it is entirely proper.

Article 21(5)

Transactions which feature non-sequential priority of payments shall include triggers relating to the performance of the underlying exposures resulting in the priority of payments reverting to sequential payments in order of seniority. Such performance-related triggers shall include at least the deterioration in the credit quality of the underlying exposures below a predetermined threshold.

Q22. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

PCS agrees that setting out examples of the types of triggers that may be found to meet the requirements is helpful, as long as it is understood that these are indeed examples and not mandatory requirements.

Article 21(6)

The transaction documentation shall include appropriate early amortisation provisions or triggers for termination of the revolving period where the securitisation is a revolving securitisation, including at least the following:

(a) a deterioration in the credit quality of the underlying exposures to or below a pre-determined threshold;

(b) the occurrence of an insolvency-related event with regard to the originator or the servicer;

(c) the value of the underlying exposures held by the SSPE falls below a pre-determined threshold
(early amortisation event);

(d) a failure to generate sufficient new underlying exposures that meet the pre-determined credit quality (trigger for termination of the revolving period).

Q23. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

PCS is not clear as to the status of the EBA's comment that insolvency of the servicer should result in its replacement. Article 21(6) deals with amortisation events and not the circumstances that would lead to a servicer replacement. Is this a new STS requirement? We note the reference to Article 21(7)(b). But we also note that Article 21(7)(b) does not require the replacement of the servicer upon insolvency but only the presence in the documents of provisions allowing such a replacement.

So we do not believe that it is an STS criterion that insolvency of the servicer should automatically lead to its removal *qua* servicer, nor do we believe that it is within the EBA's remit to create such a requirement through recommendations and guidelines. PCS also believes that the mandatory replacement of the servicer upon an insolvency event is detrimental both to investors and to the stability of the European banking system.

It is detrimental to investors because it requires shifting the servicing to a new entity with all the perils that this entails regarding systems, data and transition. This is something that investors would not contemplate unless the current servicer demonstrated that it was failing to perform its role adequately. In many cases, entities in insolvency proceedings will continue to perform their contractual obligations in full for many years. If the insolvency proceedings are of the re-habilitation type (eg UK administration), this is by design.

It is also detrimental to the stability of the banking system since most servicers are financial institutions. If these institutions become insolvent, it is in the interest of public authorities either to wind them up in an orderly manner or to re-habilitate them. Servicing securitised assets is done for a fee. It produces income. Mandatorily to remove that income from a bank precisely at the time it needs it most and when it is performing its servicing entirely in line with its contract would seem perverse and not conducive to the policy aims of public authorities when dealing with insolvent financial institutions.

Article 21(7)

The transaction documentation shall clearly specify:

(a) the contractual obligations, duties and responsibilities of the servicer and the trustee, if any, and other ancillary service providers;

(b) the processes and responsibilities necessary to ensure that a default by or an insolvency of the servicer does not result in a termination of servicing, such as a contractual provision which enables the replacement of the servicer in such cases; and

(c) provisions that ensure the replacement of derivative counterparties, liquidity providers and the account bank in the case of their default, insolvency, and other specified events, where applicable.

Q24. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

PCS agrees with the approach set out in paragraph 73.

Article 21(8)

The servicer shall have expertise in servicing exposures of a similar nature to those securitised and shall have well-documented and adequate policies, procedures and risk-management controls relating to the servicing of exposures.

Q25. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Is the requirement of minimum of 5 years of professional experience appropriate and workable in practice? Please substantiate your reasoning.

In paragraph 74, we note the reference to "adequate knowledge and skills in the *originating and underwriting* of such similar exposures" (our italics). PCS believes this may be a transcription mistake and that this should be a reference to the servicing of such similar exposures. Clearly, there are professional and experienced servicing providers who do not originate.

Generally, for both paragraphs 74 and 75, we would reiterate our comment in our response to Q11 regarding the expression "members of the management body".

In paragraph 75, it is not clear why it is required that there be a back-up servicer for an experienced servicer that is not a regulated entity. This requirement does not appear in level 1. We accept that this is only required for the purposes of deeming an unregulated entity to have experience. It is always possible, if there is no back-up servicer, for such an entity to seek to demonstrate experience pursuant to the general principles of paragraph 74. Nevertheless, the requirement for a back-up servicer appears to be a *non-sequitur* and therefore arbitrary. As such, PCS would recommend that it be removed.

PCS agrees with the approaches set out in paragraphs 76 and 77.

In paragraph 78(a), the EBA draft appears to require that the existence of well documented and adequate policies, procedures and risk management controls has been assessed and confirmed by the competent authority. It is unclear whether this refers to a specific written confirmation of that fact by the competent authority. If this is the case, is the EBA aware of any competent authority that has or would be willing to provide such written confirmation? In PCS' admittedly limited experience, competent authorities would not issue such confirmations. If this is so, then paragraph 78(a) becomes illusory.

PCS has always taken the view that if a financial institution is subject to prudential supervision in the European Union and continues to be authorised, the competent authority has concluded that the authorised entity has adequate policies, procedures and risk management controls. It would be extraordinary if this were not the case. Therefore, PCS strongly suggests that the words "and confirmed" be removed from paragraph 78(b).

PCS agrees with the approach set out in paragraph 78(b).

Q26. Do you agree with this balanced approach to the determination of the expertise of the servicer? Do you believe that more rule-based set of requirements should be specified, or, instead, more principles-based criteria should be provided? Is the requirement of minimum of 5 years of professional experience appropriate and exercisable in practice?

See our response to Q25.

Article 21(9)

The transaction documentation shall set out in clear and consistent terms definitions, remedies and actions relating to delinquency and default of debtors, debt restructuring, debt forgiveness, forbearance, payment holidays, losses, charge offs, recoveries and other asset performance remedies.

The transaction documentation shall clearly specify the priorities of payment, events which trigger changes in such priorities of payment as well as the obligation to report such events. Any change in the priorities of payments which will materially adversely affect the repayment of the securitisation position shall be reported to investors without undue delay.

Q27. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be

amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

PCS agrees and welcomes the approach set out in paragraph 79. However, PCS feels that additional guidance is necessary. More particularly, the EBA should clarify that the criterion does not preclude a high level of discretion being vested in the servicer. In other words, the criterion does not require that the procedures – whether described in detail or at a high level – be fixed in such a way as to preclude their evolution as the servicer adapts to circumstances.

Article 21(10)

The transaction documentation shall include clear provisions that facilitate the timely resolution of conflicts between different classes of investors, voting rights shall be clearly defined and allocated to noteholders and the responsibilities of the trustee and other entities with fiduciary duties to investors shall be clearly identified.

Q28. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

PCS agrees with the approach set out in paragraph 80.

PCS has been advised that in a number of jurisdictions there are mandatory legal provisions setting out how conflicts between investors are to be resolved. It might be useful for the EBA to clarify in the guidelines that, where such provisions apply, it is sufficient for the documentation to refer to these provisions.

Article 22(1)

The originator and the sponsor shall make available data on static and dynamic historical default and loss performance, such as delinquency and default data, for substantially similar exposures to those being securitised, and the sources of those data and the basis for claiming similarity, to potential investors before pricing. Those data shall cover a period of at least five years.

Q29. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

PCS strongly agrees with the approach set out in paragraph 81.

With regard to paragraph 82, we are broadly supportive but merely note that the RTS on retention is not yet final and so one cannot be sure that this provision will work as it depends on the final definition of “comparable” in that

RTS. This is more a question of keeping an eye on that definition to ensure that it is workable in the context of STS, and particularly in the context of the allowing of "proxy data" set out in paragraph 81.

Article 22(2)

A sample of the underlying exposures shall be subject to external verification prior to issuance of the securities resulting from the securitisation by an appropriate and independent party, including verification that the data disclosed in respect of the underlying exposures is accurate.

Q30. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

PCS agrees with the approaches set out in paragraphs 83 to 86.

As a matter of clarification though, PCS would suggest replacing "initial portfolio" (in paragraph 83) by "the portfolio from which the securitised pool is extracted" so that there is no confusion that the pool audit is not performed on the actual securitised pool.

In paragraph 84, one may wish to add, after credit rating agency: "or a third party certification agent or an entity affiliated to the originator."

In paragraph 85, it is PCS' understanding that pool audits do not, technically speaking, verify the conformity of assets with the eligibility criteria but with the data tape.

Article 22(3)

The originator or the sponsor shall, before the pricing of the securitisation, make available to potential investors a liability cash flow model which precisely represents the contractual relationship between the underlying exposures and the payments flowing between the originator, sponsor, investors, other third parties and the SSPE, and shall, after pricing, make that model available to investors on an ongoing basis and to potential investors upon request.

Q31. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

PCS generally agrees with the approach set out in paragraphs 87 and 88.

In line with our publicly available interpretations of the STS criteria, we would also suggest the EBA clarify that it is understood that the term "precisely" does not preclude cash flow models that allow for permutations regarding possible pre-payment rates, defaults, interest rates since this is how virtually all models work and it also what the investors require from such models.

Article 22(4)

In case of a securitisation where the underlying exposures are residential loans or auto loans or leases, the originator, sponsor and SSPE shall publish the available information related to the environmental performance of the assets financed by such residential loans or auto loans or leases, as part of the information disclosed pursuant to point (a) of the first subparagraph of Article 7(1).

Q32. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

PCS strongly agrees with the approach set out in paragraph 89.

Q33. Please provide further details and suggestions what type of information is available for residential loans and auto loans and leases that could be provided under this requirement.

PCS has no comments on this question.

Article 22(5)

The originator and the sponsor shall be responsible for compliance with Article 7. The information required by point (a) of the first subparagraph of Article 7(1) shall be made available to potential investors before pricing upon request. The information required by points (b) to (d) of the first subparagraph of Article 7(1) shall be made available before pricing at least in draft or initial form. The final documentation shall be made available to investors at the latest 15 days after closing of the transaction.

Q34. Do you agree with the interpretation of this criterion, and the aspects that the interpretation is focused on? Should interpretation be amended, further clarified or additional aspects be covered? Please substantiate your reasoning.

PCS is not entirely clear as to the meaning of paragraph 90.

There are a number of possible readings of the first part of Article 22(5). One reading is that the article merely provides for the identity of the parties responsible, in the case of an STS securitisation, for the compliance with the Article 7 disclosures. Another reading is that Article 22(5) imports into the STS criteria all the Article 7 disclosure requirements.

Since Article 7 disclosure requirements are mandatory for all securitisations, this may appear to be a semantic and irrelevant distinction. However, the requirements for issuers to certify STS and for third party certification agents potentially to verify this certification means that the distinction is very important. If the latter interpretation is correct (importation of Article 7 requirements into STS) then the issuer will need to certify the Article 7 disclosures and a third party certification agent will need to verify all such disclosures. If the former interpretation is the correct one though, all that is required to be verified, as part of the STS process, is the identity of the person assuming responsibility for the Article 7 disclosures. The scope of work and breadth of liability is therefore substantially different depending on the interpretation chosen.

PCS believes that the EBA should clarify in the guidelines which interpretation it believes to be correct.

Q35. Do you agree that no other requirements are necessary to be specified further? If not, please provide reference to the relevant provisions of the STS Regulation and their aspects that require such further specification.

In Article 20(11), it is provided that the rules apply to assets transferred to the SSPE without "undue delay". This expression is very vague and would benefit from clarification by the EBA.

On the basis that the STS rules are supposed to identify best practices in European securitisation rather than create a new higher level, PCS believes the standard delay in most European securitisations meets the no-undue delay criterion. Based on our extensive experience, we believe that three and a half months is not an undue delay and would suggest that this be the recommendation of the EBA.

In Recital 47, the EBA states that the rule in Article 20(13) on dependence on the sale of assets is not meant to capture leasing or interest-only mortgages. PCS strongly supports this interpretation. However, we have been approached by stakeholders who have expressed uncertainty regarding the interpretation of the words: "provided they comply with the guidance provided and all other applicable STS requirements". Accordingly, taking into account the importance of this provision, PCS would welcome the insertion of this recital in the guidelines and the removal or clarification of the words in quotation marks.

We have no further comments. As ever, we stand ready to assist in any way the EBA sees fit.

Yours faithfully

Prime Collateralised Securities (PCS) UK Ltd