

**JOINT ASSOCIATIONS' RESPONSE TO
EUROPEAN COMMISSION CONSULTATION ON
CRD POTENTIAL CHANGES**

SECURITISATION



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Securitisation

Key Messages

Securitisation is an important funding and risk transfer tool for the market and we strongly support efforts by the international regulatory community aimed at increasing confidence in the banking system through the capital framework. However, taken together, the amendments proposed in the securitisation area raise overarching concerns relating to adherence to better regulation principles and consistency with the global capital framework. In terms of substance, the proposal for originators to retain a minimum capital charge irrespective of the risk transferred and proposed requirements relating to significant risk transfer are cause for particular concern. For these reasons, we propose that the majority of the proposals relating to securitisation be deferred pending the conduct of meaningful consultation with stakeholders and the Basle Committee's completion of its review of the securitisation framework.

Better Regulation principles

However we are concerned by the lack of proper consultation in relation to the changes to the securitisation framework in this package of amendments. It is important for us to understand the market failure analysis, regulatory objectives, alternative policy options considered, and cost benefit analysis thereon. Indeed, the absence of commentary or prior dialogue on the regulatory objectives underpinning the changes has made it very hard for us to engage meaningfully on alternative formulations to these amendments and thus contribute to the regulatory effort. As a result, while we might support some of the concepts that lie behind the amendments and be very willing to engage with the Commission and other regulatory bodies on how the securitisation framework should be taken forward, we propose that the majority of the securitisation proposals in the CRD amendment package be deferred.

International consistency

Furthermore, many of the changes proposed appear to be in response to recent market events. We would like to highlight that the current market turmoil started while firms were still using the Basel I rules, where we accept there were many shortcomings. However, there has been very little time for the new framework to be properly assessed. We think that it is important that sufficient time is given to

undertake that review properly. We agree that risk management, the implications of the 'originate to distribute' (OTD) model and the capital charges for liquidity facilities are appropriate areas for consideration. More importantly we also think that the review should take account of ongoing industry initiatives. As you are aware the industry is making very positive strides to address recent events – firms are reassessing their risk profiles and risk management systems, models are being reviewed, rating agencies are reassessing their approaches and firms their use of ratings, valuation reviews are being undertaken, and there are a significant number of initiatives relating to transparency and disclosure. Since the Basel Committee is committed to undertaking such a review of the securitisation framework, we would urge the Commission to defer making amendments until the outcome of that analysis is known.

Parallelism with Basel, a principle which we would urge the Commission to retain, would have the added benefit of maintaining an international standard. Since the securitisation market is global it is extremely important to Members that any changes to the regulatory framework do not put EU firms at a competitive disadvantage. As the majority of changes to the securitisation framework relate to parts of the Directive that are subject to comitology, rather than co-decision, we do not see any reason why the changes should not be delayed until the Basel Committee has completed its work.

Article 95 – Flat minimum capital requirement

We think that the proposal that originators should be required to retain a minimum, 15%, capital charge on the underlying assets regardless of the risk that has been transferred should be removed from the CRD amendment package

We assume, in the absence of supporting analysis, that this change has been introduced as a result of recent market events and in response to perceived failings in the OTD model. We accept that recent market events have identified failings in this process, however, we strongly disagree that a minimum capital charge (indeed one that appears to open up a new, and, we believe, unnecessary national discretion for regulators to increase the percentage suggested) is the most appropriate way forward. We would agree with the analysis of the Financial Stability Forum as regards the benefits that the OTD model can confer:

‘When accompanied by adequate risk management and incentives, the OTD model offers a number of benefits to loan originators, investors and borrowers. Originators can benefit from greater capital efficiency, enhanced funding availability, and lower earnings volatility since the OTD model disperses credit and interest rate risks to the capital markets. Investors can benefit from a greater choice of investments, allowing them to diversify and to match their investment profile more closely to their risk preferences. Borrowers can benefit from expanded credit availability and product choice, as well as lower borrowing costs.’

We also agree with the Financial Stability Forum’s identification of the issues that require review:

A minimum capital charge, however, is unlikely to deliver the outcomes sought:

- ? It is unlikely to change firm’s underwriting standards or risk management practices as it provides no incentives to do so – it is not risk sensitive;
- ? It will not address the leverage and liquidity risk run by conduits and SIVs who were significant buyers of the resulting securitisation paper;
- ? It will not target the particular contingent risks that firms were running to such schemes;
- ? It will serve to undermine the incentives to reduce the reputational risks that the significant risk transfer and implicit support requirements seek to reduce (by encouraging investors to expect that the originating firms will support the scheme); and
- ? It will not address business model issues relating to the reliance of some firms on an active and liquid securitisation market that has proved not to perform in the way that was expected.

From a regulatory capital perspective the current proposal is likely to create perverse incentives around the boundary of the securitisation framework and encourage the origination of assets outside the regulated community. Indeed, it was assets that were originated outside the regulated sector that were at the heart of recent events. In addition, the flat capital charge is not in alignment with the risk-based approach that underpins the rest of the CRD, i.e. it does not reflect the risk that the firm is exposed to and may result in a significant divergence between economic and

regulatory capital. It is inconsistent with the treatment of other risk mitigants. Furthermore, in the absence of international agreement on this issue, such a charge will put EU firms at a competitive disadvantage, thus potentially driving securitisation activity to other locations. Firms will therefore have less access to liquidity once the market returns to more normal levels.

From a business perspective, it is unlikely to align the objectives of investors (which are themselves diverse) with those of originators because a flat capital charge can provide no real incentives. To the extent that firms hold any paper from their securitisations, this is likely to be the senior paper, because this is expensive to issue for the level of risk, and not those tranches where the risk is really located. Therefore it will not provide risk incentive sought. It is likely to have a disproportionate impact on some sectors of the market (such as credit card transactions), where margins are slim because firms are competing with non-regulated entities, but where securitisation is a very important source of funding. It will increase the cost of securitisation generally, as the cost of capital will have to be passed on to the market.

Finally, such an approach could prove difficult to implement from a practical perspective because where a firm has sold all the risk, and does not retain the servicing function, it may not have sufficient information to be able to calculate the capital required on the underlying portfolio on an ongoing basis.

Members therefore think that the proposal to introduce a flat capital charge is wholly inappropriate and should be dropped. We understand that there is an ECOFIN working group that is addressing this issue and we anticipate the review undertaken in Basel to also consider this point. We therefore recommend that the Commission wait until the outcome of these work streams is known. We would be more than happy to discuss more appropriate solutions to this issue over the coming months.

Annex IX, Part 2, 1.1 and 2.1 – Significant risk transfer

Significant risk transfer (SRT) is another area of concern. SRT has been a long running issue for the industry. It is our general view that if the capital framework is appropriately calibrated then there should be no need for the SRT requirement at all. Neither the QIS exercises, nor firm implementation have demonstrated that securitisation under the CRD results in a significant reduction in risk capital in the system. These results would tend to suggest that Basel II/CRD does not re-create

the flaw of Basel I that encouraged securitisation purely for regulatory reasons, thereby undermining the capital framework as a whole. However, as with Article 95, we have been hampered in our response by the absence of dialogue on the rationale for the proposed amendments. We believe that a full consultation is required, involving a market and regulatory failure analysis, statement of regulatory objectives, consideration of policy options and CBA. The Basel Committee would be the appropriate forum for such review, to ensure an international standard is maintained and that EU firms are not put at a competitive disadvantage. We would note, to that end, that the US (the major competitor market) is proposing not to introduce the SRT requirement.

Although we do not think that the SRT requirement is necessary or that the current proposal is the appropriate tool to address the perceived risk, we understand that regulators are keen to avoid the situation created by Basel I re-occurring. Therefore we think that, if there must be an additional requirement in this area, the appropriate regulatory objective should be to ensure that the reduction in regulatory capital taken should be broadly commensurate with the amount of risk that has been transferred.

The approach that is being proposed, however, relegates that risk focus to a secondary role, using a case by case approach is not necessary in this area, while the base case for assessment is an entirely arbitrary transfer of a certain amount of risk capital. A hard limit risk capital approach provides no certainty to firms at the outset as to the capital charges that they will face over the term of the transaction. Mezzanine tranches tend to be quite thin and therefore the approach is susceptible to capital spikes if the originator acts as market maker. Such an approach is also likely to distort behaviour.

The two-pronged approach also fails to deliver the convergence across the EU that we understand the Commission is seeking.

Detailed comments

Please find below the detailed comments made by our Members. The basic premise of our response is that we are seeking a deferral of this part of the package of CRD amendments, until a fuller consultation can be delivered on the internationally agreed proposals resulting from the Basel Review. As a result of this, the majority of our detailed comments appear as a proposed deletion.

D Waivers for cooperative bank networks and other technical amendments

Article 95	
Consultation text	Recommended amendment
<p>2. Where paragraph 1 applies, the originator credit institution shall calculate the risk-weighted exposure amounts prescribed in Annex IX for the positions that it may hold in the securitisation. <u>The risk-weighted exposure amounts for the originator credit institution shall not be less than [15%] of the risk-weighted exposure amounts of the securitised exposures had they not been securitised.</u></p> <p>Where the originator credit institution fails to transfer significant credit risk in accordance with paragraph 1, it need not calculate risk-weighted exposure amounts for any positions it may have in the securitisation in question.</p>	<p>2. Where paragraph 1 applies, the originator credit institution shall calculate the risk-weighted exposure amounts prescribed in Annex IX for the positions that it may hold in the securitisation. The risk-weighted exposure amounts for the originator credit institution shall not be less than [15%] of the risk-weighted exposure amounts of the securitised exposures had they not been securitised.</p> <p>Where the originator credit institution fails to transfer significant credit risk in accordance with paragraph 1, it need not calculate risk-weighted exposure amounts for any positions it may have in the securitisation in question.</p>
Justification	
See key messages above	

E Technical amendments to Directive 2006/48/EC

Annex V Point 3	
Consultation text	Recommended amendment
<p>(i) Credit-granting shall be based on sound and well-defined criteria. <u>This shall also be the case where the credit institution's exposure to the resulting credit risk is limited or eliminated because the credit risk has been transferred to or hedged by third parties.</u></p> <p>(ii) <u>Where credit risk is transferred to or hedged by third parties by a securitisation, internal policies and economic incentives shall be in place to ensure that the credit institution bases credit granting on sound and well-defined criteria for all exposures that are being originated in order to be securitised in full or in part. In particular, a credit institution shall consider on a case by case basis as appropriate in a given securitisation</u></p> <ul style="list-style-type: none"> <u>- to select exposures to be securitised randomly from the set of contractually eligible exposures; or</u> <u>- to retain securitisation positions in securitisations for which it originates exposures.</u> <p><u>The policies applied to this end by the originator credit institution shall be publicly disclosed.</u></p> <p>(iii) The process for approving,</p>	<p>(i) Credit-granting shall be based on sound and well-defined criteria. <u>This shall also be the case where the credit institution's exposure to the resulting credit risk is limited or eliminated because the credit risk has been transferred to or hedged by third parties.</u></p> <p>(ii) <u>Where credit risk is transferred to or hedged by third parties by a securitisation, internal policies and economic incentives shall be in place to ensure that the credit institution bases credit granting on sound and well-defined criteria for all exposures that are being originated in order to be securitised in full or in part. In particular, a credit institution shall consider on a case by case basis as appropriate in a given securitisation</u></p> <ul style="list-style-type: none"> <u>- to select exposures to be securitised randomly from the set of contractually eligible exposures; or</u> <u>- to retain securitisation positions in securitisations for which it originates exposures.</u> <p>The policies applied to this end by the originator credit institution shall be publicly disclosed.</p> <p>(iii) The process for approving,</p>

amending, renewing, and re-financing credits shall be clearly established.	amending, renewing, and re-financing credits shall be clearly established.
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Justification

As noted in the key messages above, we are supportive of the Authorities in their efforts to increase the confidence in the banking market as a whole. And we are supportive of the principle of encouraging good risk management behaviour by issuers. However, as with the proposal to amend Article 95, this change does not represent a minor technical amendment and therefore should be subject of proper review and full consultation including the normal market failure analysis, regulatory objectives, outline policy options and CBA. Since the Basel Committee is undertaking a review in this area, we think that it provides the appropriate forum for developing the changes to the framework as it is a global body, and that the Commission should continue to seek parallelism with its outputs.

In relation to any market failure analysis, we would note that some of these requirements are already addressed in market standard practice. For example, the selection process is outlined within the offering circular.

Annex V Point 8

Consultation text	Recommended amendment
The risks arising from securitisation transactions in relation to which the credit institutions are <u>investor</u> , originator or sponsor shall be evaluated and addressed through appropriate policies and procedures, to ensure in particular that the economic substance of the transaction is fully reflected in the risk assessment and management decisions.	No amendment proposed

Justification

We regard this amendment as falling somewhere between a technical amendment and a reaction to recent events. We undoubtedly support the principle that investors,

as well as other parties to a securitisation, should understand the risks that they are running. And although we think it would be more appropriate for any changes to the securitisation framework to be treated as a package, so that the impact can be fully assessed, we accept this proposed amendment.

Annex V, Point 14	
Consultation text	Recommended amendment
<p>Policies and processes for the measurement and management of their net funding position and requirements on an ongoing and forward-looking basis shall exist. Alternative scenarios shall be considered and the assumptions underpinning decisions concerning the net funding position shall be reviewed regularly. <u>Alternative scenarios shall for these purposes in particular address off-balance sheet items and other contingent liabilities. The measurement and management of a credit institution's net funding position and alternative scenarios to be considered shall also take into account the assets and liabilities, including contingent liabilities, of SSPEs or other special purpose entities and in relation to which the credit institution acts as sponsor or provides material liquidity support.</u></p>	<p>Policies and processes for the measurement and management of their net funding position and requirements on an ongoing and forward-looking basis shall exist. Alternative scenarios shall be considered and the assumptions underpinning decisions concerning the net funding position shall be reviewed regularly. Alternative scenarios shall for these purposes in particular address off-balance sheet items and other contingent liabilities. The measurement and management of a credit institution's net funding position and alternative scenarios to be considered shall also take into account the assets and liabilities, including contingent liabilities, of SSPEs or other special purpose entities and in relation to which the credit institution acts as sponsor or provides material liquidity support.</p>
Justification	
<p>As noted above, we are supportive of the Authorities in their efforts to increase the confidence in the banking market as a whole. And we are supportive of the principle of encouraging good risk management behaviour. However, as with the proposal to</p>	

amend Article 95, we believe this amendment should be subject of full review and full consultation (including market failure analysis, regulatory objectives, outline policy options and CBA). Since the Basel Committee is undertaking a review of liquidity, to which this amendment relates, we think that the Commission should defer making changes until the results of this work are known and therefore a global approach can be brought into EU legislation.

Annex VI, Part 2, Point 1.4.7

Consultation text	Recommended amendment
<p>Competent authorities shall take the necessary measures to assure that the principles of the methodology employed by the ECAI for the formulation of its credit assessments are publicly available as to allow all potential users to decide whether they are derived in a reasonable way. <u>Competent authorities shall furthermore take the necessary measures to assure that for credit assessments relating to securitisation positions, the ECAI is committed to make, on an ongoing basis, summary information on the structure of the transaction, the performance of pool assets and how this affects its credit assessment available to all credit institutions using the credit assessments for purposes of Article 96.</u></p>	<p>Competent authorities shall take the necessary measures to assure that the principles of the methodology employed by the ECAI for the formulation of its credit assessments are publicly available as to allow all potential users to decide whether they are derived in a reasonable way. Competent authorities shall furthermore take the necessary measures to assure that for credit assessments relating to securitisation positions, the ECAI is committed to make, on an ongoing basis, summary information on the structure of the transaction, the performance of pool assets and how this affects its credit assessment available to all credit institutions using the credit assessments for purposes of Article 96.</p>

Justification

While we fully support the desire to create transparency in the securitisation market, we do not regard this change to be a technical amendment. As such our comments regarding full consultation, international consistency with Basel, and the assessment

of securitisation changes as a package also apply. We therefore do not believe that this change should be made at this time.

As regards the detail of the proposal, we believe that this overlaps completely with the 'IOSCO Code of Conduct Fundamentals for Credit Rating Agencies' (as revised in May 2008 to address securitisation issues) which we consider a much more appropriate instrument for ensuring the desired level of transparency.

We note that the IOSCO Code sets out detailed requirements for Credit Rating Agencies (CRAs) to provide ongoing information to investors and/or subscribers on the structure of transactions and performance of pool assets. In the context of the general requirement in Section 3 of the Code for timely disclosure of ratings decisions, Art. 3.5.a thus requires CRAs that rate structured finance products to provide information to investors and/or subscribers about its loss and cash flow analysis and Art. 3.5 requires CRAs to publish sufficient information to allow outside parties to understand how a rating was arrived at. The ongoing performance of the underlying assets will be key to the ratings decision and review in which context, Art. 1.7-3 requires CRAs to assess the appropriateness existing methodologies and models for determining credit ratings in light of changes to the risk characteristics of the underlying assets.

We also question the workability of the proposal as currently drafted. It will be very difficult for national authorities to ensure a commitment for transparency is met, when their purview is limited (appropriately in our view) to the assessment of the rating agency for the purposes of determining whether their ratings can be used as an input into the capital calculation. In addition it is unclear as to whether free and full public disclosure is required. Currently such information will be available, but on a subscription basis.

Annex IX, Part 2, 1.1

Consultation text	Recommended amendment
The originator credit institution of a traditional securitisation may exclude securitised exposures from the calculation of risk-weighted exposure	The originator credit institution of a traditional securitisation may exclude securitised exposures from the calculation of risk-weighted exposure

amounts and expected loss amounts if

(i) significant credit risk associated with the securitised exposures ~~has~~ is considered to have been transferred to third parties; or

(ii) if the originator credit institution applies a 1250% risk weight to all securitisation positions he holds in this securitisation or deducts these securitisation positions from own funds according to Article 57(r).

Unless the competent authority decides on a case- by-case basis that a possible reduction in risk weighted exposure amounts that the originator credit institution would achieve by this securitisation is not justified by a commensurate and material transfer of credit risk to third parties, significant credit risk shall be considered to have been transferred if

(i) the risk-weighted exposure amounts of the mezzanine securitisation positions that are held by the originator credit institution in this securitisation do not exceed 50% of the risk weighted exposure amounts of all mezzanine securitisation positions that exist in this securitisation.; or if,

(ii) where there are no mezzanine securitisation positions in a given securitisation and the originator can demonstrate that the exposure value of the securitisation positions that would be subject to deduction from own funds or a

amounts and expected loss amounts if

(i) ~~significant~~ credit risk associated with the securitised exposures ~~has~~ is considered to have been transferred to third parties, which is broadly commensurate with the level of regulatory capital reduction; or

(ii) if the originator credit institution applies a 1250% risk weight to all securitisation positions he holds in this securitisation or deducts these securitisation positions from own funds according to Article 57(r). For firms that are subject to Articles X to Y [IRB], the 1250% risk weight or deduction will be capped at Kirb.

~~Unless the competent authority decides on a case- by case basis that a possible reduction in risk weighted exposure amounts that the originator credit institution would achieve by this securitisation is not justified by a commensurate and material transfer of credit risk to third parties, significant credit risk shall be considered to have been transferred if~~

~~(i) the risk-weighted exposure amounts of the mezzanine securitisation positions that are held by the originator credit institution in this securitisation do not exceed 50% of the risk weighted exposure amounts of all mezzanine securitisation positions that exist in this securitisation.; or if,~~

~~(ii) where there are no mezzanine~~

1250 % risk weight exceeds a conservative estimate of the expected loss on the securitised exposures by a substantial margin, the originator credit institution does not hold more than 20 % of the exposure values of the securitisation positions that would be subject to deduction from own funds or a 1250 % risk weight.

For these purposes, mezzanine securitisation positions shall mean securitisation positions to which a risk weight lower than 1 250 % applies and that are more junior than the most senior position in this securitisation and more junior than any securitisation positions in this securitisation to which

in the case of a securitisation position subject to paragraph 6 to 36 of part 4 of this annex a credit quality step 1 or

in the case of a securitisation position subject to paragraph 37 to 76 of part 4 of this annex a credit quality step 1 or 2 is assigned under Part 3 of this annex applies.

Notwithstanding the above, the competent authority may decide on a case-by-case basis that significant credit risk may be considered to have been transferred if the competent authority is satisfied that a possible reduction of capital requirements that the originator achieves by the securitisation is justified by a commensurate and material transfer

~~securitisation positions in a given securitisation and the originator can demonstrate that the exposure value of the securitisation positions that would be subject to deduction from own funds or a 1250 % risk weight exceeds a conservative estimate of the expected loss on the securitised exposures by a substantial margin, the originator credit institution does not hold more than 20 % of the exposure values of the securitisation positions that would be subject to deduction from own funds or a 1250 % risk weight.~~

~~For these purposes, mezzanine securitisation positions shall mean securitisation positions to which a risk weight lower than 1 250 % applies and that are more junior than the most senior position in this securitisation and more junior than any securitisation positions in this securitisation to which~~

~~in the case of a securitisation position subject to paragraph 6 to 36 of part 4 of this annex a credit quality step 1 or~~

~~in the case of a securitisation position subject to paragraph 37 to 76 of part 4 of this annex a credit quality step 1 or 2 is assigned under Part 3 of this annex applies.~~

~~Notwithstanding the above, the competent authority may decide on a case-by-case basis that significant credit risk may be considered to have been~~

<p>of credit risk to third parties. The competent authorities shall only be satisfied if the originator credit institution can demonstrate that such transfer of credit risk to third parties is also assumed for purposes of the credit institutions internal risk management and its internal capital allocation. The compliance with this condition shall be periodically reviewed.</p> <p>and the transfer complies withIn addition, all of the following conditions shall be met:"</p>	<p>transferred if the competent authority is satisfied that a possible reduction of capital requirements that the originator achieves by the securitisation is justified by a commensurate and material transfer of credit risk to third parties. The competent authorities shall only be satisfied if</p> <p>For the purposes of (i) the originator credit institution can shall be capable of demonstrating, if requested, that such the transfer of reduction in credit risk to third parties is also assumed for purposes of the credit institutions internal risk management and its internal capital allocation is broadly commensurate with the reduction in the capital requirement. The A credit institution shall periodically review its compliance with this condition shall be periodically reviewed.</p> <p>and the transfer complies withIn addition, all of the following conditions shall be met:"</p>
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Justification

See key messages

In addition the general case requirement where there are no mezzanine tranches is unclear. For example, what would be required to ‘demonstrate that the exposure value of the securitisation positions that would be subject to deduction from own funds or a 1250 % risk weight exceeds a conservative estimate of the expected loss on the securitised exposures by a substantial margin’.

We do, however, support the clarification that where items are deducted or 1250% weighted the significant risk transfer requirements are met. However we think that for IRB firms it should be made clear that deduction/1250% risk weight is only necessary up to Kirb.

Annex IX, Part 2, 2.1

Consultation text	Recommended amendment
<p>An originator credit institution of a synthetic securitisation may calculate risk-weighted exposure amounts, and, as relevant, expected loss amounts, for the securitised exposures in accordance with points 3 and 4 below, if</p> <p>(i) significant credit risk has <u>is considered to have</u> been transferred to third parties either through funded or unfunded credit protection; <u>or</u></p> <p><u>(ii) the originator credit institution applies a 1250% risk weight to all securitisation positions he holds in this securitisation or deducts these securitisation positions from own funds according to Article 57(r).</u></p> <p><u>Unless the competent authority decides on a case- by-case basis that a possible reduction in risk weighted exposure amounts that the originator credit institution would achieve by this securitisation is not justified by a commensurate and material transfer of credit risk to third parties, significant credit risk shall be considered to have been transferred if</u></p> <p><u>(i) the risk-weighted exposure amounts of the mezzanine securitisation positions that are held by the originator credit institution in this securitisation do not</u></p>	<p>An originator credit institution of a synthetic securitisation may calculate risk-weighted exposure amounts, and, as relevant, expected loss amounts, for the securitised exposures in accordance with points 3 and 4 below, if</p> <p>(i) significant credit risk associated with the securitised exposures has <u>is considered to have</u> been transferred to third parties, <u>which is broadly commensurate with the level of capital reduction;</u> <u>or</u></p> <p><u>(ii) the originator credit institution applies a 1250% risk weight to all securitisation positions he holds in this securitisation or deducts these securitisation positions from own funds according to Article 57(r).</u></p> <p><u>For firms that are subject to Articles X to Y [IRB], the 1250% risk weight or deduction will be capped at Kirb.</u></p> <p>Unless the competent authority decides on a case- by case basis that a possible reduction in risk weighted exposure amounts that the originator credit institution would achieve by this securitisation is not justified by a commensurate and material transfer of credit risk to third parties, significant credit risk shall be considered to have</p>

exceed 50% of the risk weighted exposure amounts of all mezzanine securitisation positions that exist in this securitisation.; or if,

(ii) where there are no mezzanine securitisation positions in a given securitisation and the originator can demonstrate that the exposure value of the securitisation positions that would be subject to deduction from own funds or a 1250 % risk weight exceeds a conservative estimate of the expected loss on the securitised exposures by a substantial margin, the originator credit institution does not hold more than 20 % of the exposure values of the securitisation positions that would be subject to deduction from own funds or a 1250 % risk weight.

For these purposes, mezzanine securitisation positions shall mean securitisation positions to which a risk weight lower than 1 250 % applies and that are more junior than the most senior position in this securitisation and more junior than any securitisation positions in this securitisation to which

in the case of a securitisation position subject to paragraph 6 to 36 of part 4 of this annex a credit quality step 1 or

in the case of a securitisation position subject to paragraph 37 to 76 of part 4 of this annex a credit quality step 1 or 2 is assigned

been transferred if

~~(i) the risk weighted exposure amounts of the mezzanine securitisation positions that are held by the originator credit institution in this securitisation do not exceed 50% of the risk weighted exposure amounts of all mezzanine securitisation positions that exist in this securitisation.; or if,~~

~~(ii) where there are no mezzanine securitisation positions in a given securitisation and the originator can demonstrate that the exposure value of the securitisation positions that would be subject to deduction from own funds or a 1250 % risk weight exceeds a conservative estimate of the expected loss on the securitised exposures by a substantial margin, the originator credit institution does not hold more than 20 % of the exposure values of the securitisation positions that would be subject to deduction from own funds or a 1250 % risk weight.~~

~~For these purposes, mezzanine securitisation positions shall mean securitisation positions to which a risk weight lower than 1 250 % applies and that are more junior than the most senior position in this securitisation and more junior than any securitisation positions in this securitisation to which~~

~~in the case of a securitisation position subject to paragraph 6 to 36 of part 4 of this annex~~

<p><u>under Part 3 of this annex applies.</u></p> <p><u>Notwithstanding the above, the competent authority may decide on a case-by-case basis that significant credit risk may be considered to have been transferred if the competent authority is satisfied that a possible reduction of capital requirements that the originator achieves by the securitisation is justified by a commensurate and material transfer of credit risk to third parties. The competent authorities shall only be satisfied if the originator credit institution can demonstrate that such transfer of credit risk to third parties is also assumed for purposes of the credit institutions internal risk management and its internal capital allocation. The compliance with this condition shall be periodically reviewed.</u></p> <p><u>In addition, the transfer shall comply</u>ies with the following conditions</p>	<p><u>a credit quality step 1 or</u></p> <p><u>_____ in the case of a securitisation position subject to paragraph 37 to 76 of part 4 of this annex a credit quality step 1 or 2 is assigned under Part 3 of this annex applies.</u></p> <p><u>Notwithstanding the above, the competent authority may decide on a case by case basis that significant credit risk may be considered to have been transferred if the competent authority is satisfied that a possible reduction of capital requirements that the originator achieves by the securitisation is justified by a commensurate and material transfer of credit risk to third parties.</u></p> <p><u>For the purposes of (i) the originator credit institution can shall be capable of demonstrating, if requested, that such the transfer of reduction in credit risk to third parties is also assumed for purposes of the credit institutions internal risk management and its internal capital allocation is broadly commensurate with the reduction in the capital requirement. The A credit institution shall periodically review its compliance with this condition shall be periodically reviewed.</u></p> <p><u>In addition, the transfer shall comply</u>ies with the following conditions</p>
<p>Justification</p> <p>See Annex IX, Part 2, 1.1 above.</p>	

Annex IX, Part 4, 2.4.2

Consultation text	Recommended amendment
<p>Liquidity facilities that may be drawn only in the event of a general market disruption</p> <p>14. To determine its exposure value, a conversion figure of 0 % may be applied to the nominal amount of a liquidity facility that may be drawn only in the event of a general market disruption (i.e. where more than one SPE across different transactions are unable to roll over maturing commercial paper and that inability is not the result of an impairment of the SPE's credit quality or of the credit quality of the securitised exposures), provided that the conditions set out in point 13 are satisfied.</p>	<p><u>Liquidity facilities that may be drawn only in the event of a general market disruption</u></p> <p><u>14. To determine its exposure value, a conversion figure of 0 % may be applied to the nominal amount of a liquidity facility that may be drawn only in the event of a general market disruption (i.e. where more than one SPE across different transactions are unable to roll over maturing commercial paper and that inability is not the result of an impairment of the SPE's credit quality or of the credit quality of the securitised exposures), provided that the conditions set out in point 13 are satisfied.</u></p>

Justification

While we fully endorse the need to review certain aspects of the capital framework in response to recent events, and agree that liquidity facilities are an appropriate area for consideration, our comments in relation to Article 95 regarding the need for proper review, a full consultation and the need for global consistency also apply to this proposal. As a result we believe that this amendment should be deferred and any changes to the framework resulting from the Basel review, and supported by drawdown data, should be consulted upon as part of a package. We would be happy to provide drawdown data to you and other regulatory bodies, on these and other liquidity facilities, to assist in the development of future policy

You have also separately asked for impact data on this proposal. Members indicate that 0% conversion factor applies to only a very small percentage of liquidity facilities in the market. Although the impact of the proposal, therefore, is likely to be small, we do not believe that this obviates the need for full review, international consistency and consultation on the changes to the securitisation framework as a package. As

such we continue to believe that this change should be deferred.

Annex IX, Part 4, 3.5.1

Consultation text	Recommended amendment
<p>Liquidity Facilities Only Available in the Event of General Market Disruption</p> <p>56. A conversion figure of 20 % may be applied to the nominal amount of a liquidity facility that may only be drawn in the event of a general market disruption and that meets the conditions to be an 'eligible liquidity facility' set out in point 13.</p>	<p><u>Liquidity Facilities Only Available in the Event of General Market Disruption</u></p> <p><u>56. A conversion figure of 20 % may be applied to the nominal amount of a liquidity facility that may only be drawn in the event of a general market disruption and that meets the conditions to be an 'eligible liquidity facility' set out in point 13.</u></p>
<p style="text-align: center;">Justification</p> <p>See comments for Annex IX, Part 4, 2.4.2 above.</p> <p>As above, Members indicate that these facilities are not a significant part of the EU market and as such the proposed change would not have a material impact. As regards the future potential of these facilities, Members would note that the market is undergoing a significant re-adjustment and that it is not possible determine how it will ultimately develop at the current time.</p>	

Annex IX, Part 4, 2.1.1, Point 13

Consultation text	Recommended amendment
<p>When the following conditions are met, to determine its exposure value a conversion figure 50% 20% may be applied to the nominal amount of a liquidity facility with an original maturity of</p>	<p>When the following conditions are met, to determine its exposure value a conversion figure 50% <u>20%</u> may be applied to the nominal amount of a liquidity facility <u>with an original maturity of</u></p>

one year or less and a conversion figure of 50 % may be applied to the nominal amount of a liquidity facility with an original maturity of more than one year:	<u>one year or less and a conversion figure of 50 % may be applied to the nominal amount of a liquidity facility with an original maturity of more than one year:</u>
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Justification

See comments for Annex IX, Part 4, 2.4.2 above.

We are unable to provide the additional information regarding the impact of this proposal that was requested. The Members who have participated in this work stream have been those using the advanced approaches to credit risk. However, since these sorts of facilities are not common in the market, the impact is likely to be small. As noted above, however, we do not believe that this obviates the need for full review and consultation.

Annex IX, Part 4, 3.3, Point 48

Consultation text	Recommended amendment
<p>A risk weight of 6 % may be applied to a position in the most senior tranche of a securitisation where that tranche is senior in all respects to another tranche of the securitisation positions which would receive a risk weight of 7 % under point 46, provided that:</p> <p>(a) the competent authority is satisfied that this is justified due to the loss absorption qualities of subordinate tranches in the securitisation; and</p> <p>(b) either the position has an external credit assessment which has been determined to be associated with credit quality step 1 in Table 4 or 5 or, if it is unrated, requirements (a) to (c) in point 42 are satisfied where 'reference</p>	No amendment

~~positions' are taken to mean positions in the subordinate tranche which would receive a risk weight of 7 % under point 46.~~

Justification

We recognise that the 6% risk weight is inconsistent with Basel and accept the proposed change. Members estimate that the change will not have a material impact; the tortuous nature of the drafting has meant that the 6% capital requirement has not been extensively used in practice. The UK has implemented the CRDTG guidance in advance of most firms' implementation at the start of this year, which means that the impact will be the 1% difference between in the risk weight for a small proportion of positions.