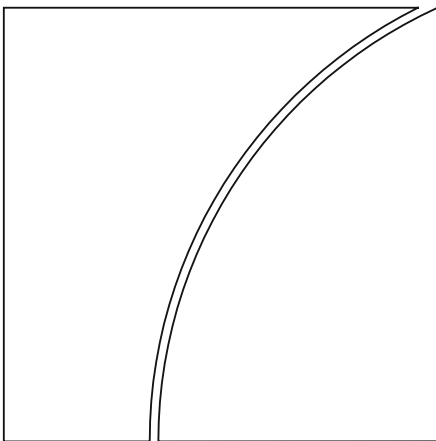


Basel Committee
on Banking Supervision

Board of the
International Organization of
Securities Commissions



Criteria for identifying simple, transparent and comparable securitisations

July 2015



BANK FOR INTERNATIONAL SETTLEMENTS



This publication is available on the BIS website (www.bis.org) and IOSCO website (www.iosco.org).

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ISBN 978-92-9197-188-6 (print)

ISBN 978-92-9197-189-3 (online)

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Glossary of abbreviations

ABS	Asset-backed securities
ABCP	Asset-backed commercial paper
Agency MBS	Mortgage-backed securities issued by the Government National Mortgage Association (Ginnie Mae, a US government agency) or US government-sponsored enterprises the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)
CDO	Collateralised debt obligation: a structured ABS in which the underlying assets that serve as collateral are debt obligations
CMBS	Commercial mortgage-backed securities: debt securities backed by commercial mortgage loans
Conduit	For the purposes of this consultation paper, a financial entity that buys loans and other financial assets, and repackages and sells the assets as securities (ie securitises)
Consumer ABS	Includes asset classes such as credit cards, auto loans and retail consumer asset securitisations
GSEs	Government-sponsored enterprises in the US
RMBS	Residential mortgage-backed securities: debt securities backed by residential mortgage loans
SIV	Structured investment vehicle: a special purpose vehicle that typically buys longer-term instruments and funds them with shorter- and/or medium-term debt
SPV	Special purpose vehicle: an entity that is created solely for a particular financial transaction or series of transactions

Criteria for identifying simple, transparent and comparable securitisations

Introduction

The Basel Committee on Banking Supervision (BCBS) and the International Organization of Securities Commissions (IOSCO) have issued today final criteria for identifying simple, transparent and comparable securitisations. The purpose of these criteria is not to serve as a substitute for investors' due diligence but rather to identify and assist in the financial industry's development of simple and transparent securitisation structures.

These criteria apply only to term securitisations and are non-exhaustive and non-binding. Additional and/or more detailed criteria may be necessary based on specific needs and applications. The criteria are not, of themselves, a prescription for regulatory action.

Objectives of simple, transparent and comparable (STC) securitisations

What does STC mean?

Simplicity	Simplicity refers to the homogeneity of underlying assets with simple characteristics, and a transaction structure that is not overly complex.
Transparency	Criteria on transparency provide investors with sufficient information on the underlying assets, the structure of the transaction and the parties involved in the transaction, thereby promoting a more comprehensive and thorough understanding of the risks involved. The manner in which the information is available should not hinder transparency, but instead support investors in their assessment.
Comparability	Criteria promoting comparability could assist investors in their understanding of such investments and enable more straightforward comparison across securitisation products within an asset class. Importantly, they should appropriately take into account differences across jurisdictions.

An important lesson from the 2007–09 financial crisis was that the securitisation structure itself can represent a source of risk: complex and opaque structures may render it unfeasible for some investors to understand the cash flow-generating mechanism and where disruptions may arise in the future. Furthermore, the financial crisis highlighted that even simple and transparent securitisations could perform poorly if the underlying assets were subject to weak underwriting and poor governance. Therefore, investors need to carry out a careful risk assessment of securitisations, including their own evaluation of the credit quality of the underlying assets.

The identification of criteria for simplicity, transparency and comparability is intended to help transaction parties – including originators, investors and other parties with a fiduciary responsibility – evaluate the risks of a particular securitisation across similar products. In the case of investors, these criteria should assist them with their due diligence on securitisations, but in no case would these criteria serve as a substitute for such due diligence.

By improving simplicity in terms of assets and structure, the STC criteria may contribute to a more accurate assessment by both investors and supervisors of the risk of securitisation exposures. By improving transparency, the STC criteria may help provide investors with greater access to comprehensive and reliable information about the structure and the underlying assets' characteristics

and their performance during the life of the transactions. Together, these may help investors conduct a more thorough analysis of the risks and returns. Combined with greater comparability of certain elements of securitisation transactions, these could lower the hurdles for assessing securitisations.

Process of developing STC criteria

In 2014 the BCBS and IOSCO established a joint task force to review developments in securitisation markets. This Task Force on Securitisation Markets (TFSM) was charged with (i) identifying the factors that may be hindering the development of sustainable securitisation markets, and (ii) developing criteria to identify and assist in the financial industry's development of simple and transparent securitisation structures.

The TFSM collected data, surveyed national authorities and market participants, and undertook bilateral interviews as part of its assessment of securitisation markets. The TFSM considered the various types of investors that may be investing in securitisation, and focused in particular on the participation of non-bank investors such as insurance companies, pension funds and certain investment funds in securitisation markets.

Building on this work, in December 2014 the BCBS and IOSCO published for consultation 14 criteria to identify certain features of simple, transparent and comparable securitisations.¹ The consultative document sought feedback on (i) whether the criteria achieved the targeted goals; (ii) whether the criteria were appropriate, sufficiently detailed and clear enough; and (iii) whether further work should be undertaken to develop criteria for short-term securitisations (eg ABCP), which have been so far outside of the scope of the Committees' goals; and enhance the level of standardisation of securitisation transactions' documentation.

Feedback to the consultation

Overall respondents welcomed the positive regulatory impetus of the BCBS and IOSCO to identify STC transactions. Respondents broadly agreed that the proposed STC criteria are reasonable and sensible, and might further assist investors in the investment decision-making process.

Notwithstanding, respondents raised a number of technical concerns where they believed that the criteria as proposed were too prescriptive and granular. Other respondents requested further clarity on certain aspects of the criteria. After considering all comments, the BCBS and IOSCO have amended certain aspects of the criteria that were considered overly prescriptive, and clarified other issues where respondents raised doubts about their interpretation or implementation. In finalising the STC criteria, the BCBS and IOSCO have aimed to strike the right balance in the level of detail for global criteria that can be applied to all asset types and across jurisdictions. As noted before, additional and/or more detailed criteria may be necessary based on specific needs and applications.

There were numerous comments on the method of implementation and potential impact on regulations, but those aspects were out of the scope of the consultation.

¹ The consultative document is available at: www.bis.org/bcbs/publ/d304.pdf. The comment period ended on 13 February 2015. Non-confidential comments are available on the BIS website at: www.bis.org/bcbs/publ/comments/d304/overview.htm.

In response to questions posed in the consultative document, many public commentators submitted feedback that criteria for short term securitisations (eg ABCP) and enhanced standardisation of securitisation documentation would be useful. The BCBS and IOSCO will consider whether, and how, to take such work forward.

Design of the STC criteria

The 14 STC criteria which, if satisfied, could indicate that a securitisation possesses a level of simplicity, transparency and comparability that could assist market participants in evaluating the risks of a securitisation transaction.

The criteria are mapped to key types of risk in the securitisation process:

- (a) Generic criteria relating to the underlying asset pool (**asset risk**)
- (b) Transparency around the securitisation structure (**structural risk**)
- (c) Governance of key parties to the securitisation process (**fiduciary and servicer risk**)

The “asset risk” category includes generic criteria in relation to the underlying asset pool, but does not address the ultimate credit risk of underlying securitisation pools.

The table below outlines the 14 STC criteria that seek to help identify asset risk, structural risk and fiduciary and servicer risk, noting their purpose with respect to simplicity, transparency and/or comparability. The criteria are set out in full in the annex.

Section		Criteria summary	Purpose ¹
A. Asset risk	1.	Nature of the assets	S, T, C
	2.	Asset performance history	T, C
	3.	Payment status	S, T, C
	4.	Consistency of underwriting	S, C
	5.	Asset selection and transfer	S, T, C
	6.	Initial and ongoing data	S, T, C
B. Structural risk	7.	Redemption cash flows	S
	8.	Currency and interest rate asset and liability mismatches	S, C
	9.	Payment priorities and observability	S, T, C
	10.	Voting and enforcement rights	S, T, C
	11.	Documentation disclosure and legal review	T, C
	12.	Alignment of interests	S, C
C. Fiduciary and servicer risk	13.	Fiduciary and contractual responsibilities	T, C
	14.	Transparency to investors	T, C

¹ S = simplicity; T = transparency; C = comparability.

Additional and/or more detailed criteria, such as those related to credit risks of the underlying securitised assets, may be necessary based on specific needs and applications, eg investor mandates, regulatory applications and central bank collateral frameworks.

Annex

Criteria for identifying simple, transparent and comparable (STC) securitisations

A. Asset risk

1. Nature of the assets

Criteria

In simple, transparent and comparable securitisations, the assets underlying the securitisation should be credit claims or receivables that are homogeneous. In assessing homogeneity, consideration should be given to asset type, jurisdiction, legal system and currency.

As more exotic asset classes require more complex and deeper analysis, credit claims or receivables should have contractually identified periodic payment streams relating to rental,² principal, interest, or principal and interest payments. Any referenced interest payments or discount rates should be based on commonly encountered market interest rates,³ but should not reference complex or complicated formulae or exotic derivatives.⁴

2. Asset performance history

Criteria

In order to provide investors with sufficient information on an asset class to conduct appropriate due diligence and access to a sufficiently rich data set to enable a more accurate calculation of expected loss in different stress scenarios, verifiable loss performance data, such as delinquency and default data, should be available for credit claims and receivables with substantially similar risk characteristics to those being securitised, for a time period long enough to permit meaningful evaluation by investors. Sources of and access to data and the basis for claiming similarity to credit claims or receivables being securitised should be clearly disclosed to all market participants.

² Payments on operating and financing lease are typically considered to be rental payments rather than payments of principal and interest.

³ Commonly encountered market interest rates may include rates reflective of a lender's cost of funds, to the extent sufficient data is provided to investors to allow them to assess their relation to other market rates.

⁴ The Global Association of Risk Professionals (GARP) defines an exotic instrument as a financial asset or instrument with features making it more complex than simpler, plain vanilla, products.

Additional consideration that is not part of the criterion⁵

In addition to the history of the asset class within a jurisdiction, investors should consider whether the originator, sponsor, servicer and other parties with a fiduciary responsibility to the securitisation have an established performance history for substantially similar credit claims or receivables to those being securitised and for an appropriately long period of time.

It is not the intention of the criteria to form an impediment to the entry of new participants to the market, but rather that investors should take into account the performance history of the asset class and the transaction parties when deciding whether to invest in a securitisation.

3. Payment status

Criteria

Non-performing credit claims and receivables are likely to require more complex and heightened analysis. In order to ensure that only performing credit claims and receivables are assigned to a securitisation, credit claims or receivables being transferred to the securitisation may not, at the time of inclusion in the pool, include obligations that are in default or delinquent or obligations for which the transferor⁶ or parties to the securitisation⁷ are aware of evidence indicating a material increase in expected losses or of enforcement actions.

4. Consistency of underwriting

Criteria

Investor analysis should be simpler and more straightforward where the securitisation is of credit claims or receivables that satisfy materially non-deteriorating origination standards. To ensure that the quality of the securitised credit claims and receivables is not affected by changes in underwriting standards, the originator should demonstrate to investors that any credit claims or receivables being transferred to the securitisation have been originated in the ordinary course of the originator's business to materially non-deteriorating underwriting standards. Where underwriting standards change, the originator should disclose the timing and purpose of such changes. Underwriting standards should not be less stringent than those applied to credit claims and receivables retained on the balance sheet.

These should be credit claims or receivables which have satisfied materially non-deteriorating underwriting criteria and for which the obligors have been assessed as having the ability and volition to make timely payments on obligations; or on granular pools of obligors originated in the ordinary course of the originator's business where expected cash flows have been modelled to meet stated obligations of the securitisation under prudently stressed loan loss scenarios.

⁵ This "additional consideration" may form part of investors' due diligence process, but does not form part of the criteria when determining whether a securitisation can be considered "simple, transparent and comparable."

⁶ Eg the originator or sponsor.

⁷ Eg the servicer or a party with a fiduciary responsibility.

5. Asset selection and transfer

Criteria

Whilst recognising that credit claims or receivables transferred to a securitisation will be subject to defined criteria,⁸ the performance of the securitisation should not rely upon the ongoing selection of assets through active management⁹ on a discretionary basis of the securitisation's underlying portfolio. Credit claims or receivables transferred to a securitisation should satisfy clearly defined eligibility criteria. Credit claims or receivables transferred to a securitisation after the closing date may not be actively selected, actively managed or otherwise cherry-picked on a discretionary basis. Investors should be able to assess the credit risk of the asset pool prior to their investment decisions.

In order to meet the principle of true sale, the securitisation should effect true sale such that the underlying credit claims or receivables:

- are enforceable against the obligor and their enforceability is included in the representations and warranties of the securitisation;
- are beyond the reach of the seller, its creditors or liquidators and are not subject to material re-characterisation or clawback risks;
- are not effected through credit default swaps, derivatives or guarantees, but by a transfer¹⁰ of the credit claims or the receivables to the securitisation; and
- demonstrate effective recourse to the ultimate obligation for the underlying credit claims or receivables and are not a securitisation of other securitisations.

In applicable jurisdictions, securitisations employing transfers of credit claims or receivables by other means should demonstrate the existence of material obstacles preventing true sale at issuance¹¹ and should clearly demonstrate the method of recourse to ultimate obligors.¹² In such jurisdictions, any conditions where the transfer of the credit claims or receivable is delayed or contingent upon specific events and any factors affecting timely perfection of claims by the securitisation should be clearly disclosed.

The originator should provide representations and warranties that the credit claims or receivables being transferred to the securitisation are not subject to any condition or encumbrance that can be foreseen to adversely affect enforceability in respect of collections due.

⁸ Eg the size of the obligation, the age of the borrower or the LTV (loan to value) of the property, DTI (debt-to-income) and / or DSC (debt service coverage) ratios.

⁹ Provided they are not actively selected or otherwise cherry-picked on a discretionary basis, the addition of credit claims or receivables during the revolving periods or their substitution or repurchasing due to the breach of representations and warranties do not represent active portfolio management.

¹⁰ The requirement should not affect jurisdictions whose legal frameworks provide for a true sale with the same effects as described above, but by means other than a transfer of the credit claims or receivables.

¹¹ Eg the immediate realisation of transfer tax or the requirement to notify all obligors of the transfer.

¹² Eg equitable assignment, perfected contingent transfer.

6. Initial and ongoing data

Criteria

To assist investors in conducting appropriate due diligence prior to investing in a new offering, sufficient loan-level data in accordance with applicable laws or, in the case of granular pools, summary stratification data on the relevant risk characteristics of the underlying pool should be available to potential investors before pricing of a securitisation.

To assist investors in conducting appropriate and ongoing monitoring of their investments' performance and so that investors that wish to purchase a securitisation in the secondary market have sufficient information to conduct appropriate due diligence, timely loan-level data in accordance with applicable laws or granular pool stratification data on the risk characteristics of the underlying pool and standardised investor reports should be readily available to current and potential investors at least quarterly throughout the life of the securitisation. Cut-off dates of the loan-level or granular pool stratification data should be aligned with those used for investor reporting.

To provide a level of assurance that the reporting of the underlying credit claims or receivables is accurate and that the underlying credit claims or receivables meet the eligibility requirements, the initial portfolio should be reviewed¹³ for conformity with the eligibility requirements by an appropriate legally accountable and independent third party, such as an independent accounting practice or the calculation agent or management company for the securitisation.

B. Structural risk

7. Redemption cash flows

Criteria

Liabilities subject to the refinancing risk of the underlying credit claims or receivables are likely to require more complex and heightened analysis. To help ensure that the underlying credit claims or receivables do not need to be refinanced over a short period of time, there should not be a reliance on the sale or refinancing of the underlying credit claims or receivables in order to repay the liabilities, unless the underlying pool of credit claims or receivables is sufficiently granular and has sufficiently distributed repayment profiles. Rights to receive income from the assets specified to support redemption payments should be considered as eligible credit claims or receivables in this regard.¹⁴

8. Currency and interest rate asset and liability mismatches

Criteria

To reduce the payment risk arising from the different interest rate and currency profiles of assets and liabilities and to improve investors' ability to model cash flows, interest rate and foreign currency risks

¹³ The review should confirm that the credit claims or receivables transferred to the securitisation meet the portfolio eligibility requirements. The review could, for example, be undertaken on a representative sample of the initial portfolio, with the application of a minimum confidence level. The verification report needs not be provided but its results, including any material exceptions, should be disclosed in the initial offering documentation.

¹⁴ For example, associated savings plans designed to repay principal at maturity.

should be appropriately mitigated¹⁵ at all times, and if any hedging transaction is executed the transaction should be documented according to industry-standard master agreements. Only derivatives used for genuine hedging of asset and liability mismatches of interest rate and / or currency should be allowed.

9. Payment priorities and observability

Criteria

To prevent investors being subjected to unexpected repayment profiles during the life of a securitisation, the priorities of payments for all liabilities in all circumstances should be clearly defined at the time of securitisation and appropriate legal comfort regarding their enforceability should be provided.

To ensure that junior note holders do not have inappropriate payment preference over senior note holders that are due and payable, throughout the life of a securitisation, or, where there are multiple securitisations backed by the same pool of credit claims or receivables, throughout the life of the securitisation programme, junior liabilities should not have payment preference over senior liabilities which are due and payable. The securitisation should not be structured as a “reverse” cash flow waterfall such that junior liabilities are paid where due and payable senior liabilities have not been paid.

To help provide investors with full transparency over any changes to the cash flow waterfall, payment profile or priority of payments that might affect a securitisation, all triggers affecting the cash flow waterfall, payment profile or priority of payments of the securitisation should be clearly and fully disclosed both in offering documents and in investor reports, with information in the investor report that clearly identifies the breach status, the ability for the breach to be reversed and the consequences of the breach. Investor reports should contain information that allows investors to monitor the evolution over time of the indicators that are subject to triggers. Any triggers breached between payment dates should be disclosed to investors on a timely basis in accordance with the terms and conditions of all underlying transaction documents.

Securitisations featuring a revolving period should include provisions for appropriate early amortisation events and/or triggers of termination of the revolving period, including, notably: (i) deterioration in the credit quality of the underlying exposures; (ii) a failure to acquire sufficient new underlying exposures of similar credit quality; and (iii) the occurrence of an insolvency-related event with regard to the originator or the servicer.

Following the occurrence of a performance-related trigger, an event of default or an acceleration event, the securitisation positions should be repaid in accordance with a sequential amortisation priority of payments, in order of tranche seniority, and there should not be provisions requiring immediate liquidation of the underlying assets at market value.

To assist investors in their ability to appropriately model the cash flow waterfall of the securitisation, the originator or sponsor should make available to investors, both before pricing of the securitisation and on an ongoing basis, a liability cash flow model or information on the cash flow provisions allowing appropriate modelling of the securitisation cash flow waterfall.

To ensure that debt forgiveness, forbearance, payment holidays and other asset performance remedies can be clearly identified, policies and procedures, definitions, remedies and actions relating to

¹⁵ The term “appropriately mitigated” should be understood as not necessarily requiring a matching hedge. The appropriateness of hedging through the life of the transaction should be demonstrated and disclosed on a continuous basis to investors.

delinquency, default or restructuring of underlying debtors should be provided in clear and consistent terms, such that investors can clearly identify debt forgiveness, forbearance, payment holidays, restructuring and other asset performance remedies on an ongoing basis.

10. Voting and enforcement rights

Criteria

To help ensure clarity for securitisation note holders of their rights and ability to control and enforce on the underlying credit claims or receivables, upon insolvency of the originator or sponsor, all voting and enforcement rights related to the credit claims or receivables should be transferred to the securitisation. Investors' rights in the securitisation should be clearly defined in all circumstances, including the rights of senior versus junior note holders.

11. Documentation disclosure and legal review

Criteria

To help investors to fully understand the terms, conditions, legal and commercial information prior to investing in a new offering¹⁶ and to ensure that this information is set out in a clear and effective manner for all programmes and offerings, sufficient initial offering¹⁷ and draft underlying¹⁸ documentation should be made available to investors (and readily available to potential investors on a continuous basis) within a reasonably sufficient period of time prior to pricing, or when legally permissible, such that the investor is provided with full disclosure of the legal and commercial information and comprehensive risk factors needed to make informed investment decisions. Final offering documents should be available from the closing date and all final underlying transaction documents shortly thereafter. These should be composed such that readers can readily find, understand and use relevant information.

To ensure that all the securitisation's underlying documentation has been subject to appropriate review prior to publication, the terms and documentation of the securitisation should be reviewed by an appropriately experienced third party legal practice, such as a legal counsel already instructed by one of the transaction parties, eg by the arranger or the trustee. Investors should be notified in a timely fashion of any changes in such documents that have an impact on the structural risks in the securitisation.

¹⁶ For the avoidance of doubt, any type of securitisation should be allowed to fulfil the requirements of Criterion 11 once it meets its proscribed standards of disclosure and legal review.

¹⁷ Eg draft offering circular, draft offering memorandum, draft offering document or draft prospectus, such as a 'red herring'.

¹⁸ Eg asset sale agreement, assignment, novation or transfer agreement; servicing, backup servicing, administration and cash management agreements; trust/management deed, security deed, agency agreement, account bank agreement, guaranteed investment contract, incorporated terms or master trust framework or master definitions agreement as applicable; any relevant inter-creditor agreements, swap or derivative documentation, subordinated loan agreements, start-up loan agreements and liquidity facility agreements; and any other relevant underlying documentation, including legal opinions.

12. Alignment of interest

Criteria

In order to align the interests of those responsible for the underwriting of the credit claims or receivables with those of investors, the originator or sponsor of the credit claims or receivables should retain a material net economic exposure and demonstrate a financial incentive in the performance of these assets following their securitisation.

C. Fiduciary and servicer risk

13. Fiduciary and contractual responsibilities

Criteria

To help ensure servicers have extensive workout expertise, thorough legal and collateral knowledge and a proven track record in loss mitigation, such parties should be able to demonstrate expertise in the servicing of the underlying credit claims or receivables, supported by a management team with extensive industry experience. The servicer should at all times act in accordance with reasonable and prudent standards. Policies, procedures and risk management controls should be well documented and adhere to good market practices and relevant regulatory regimes. There should be strong systems and reporting capabilities in place.

The party or parties with fiduciary responsibility should act on a timely basis in the best interests of the securitisation note holders, and both the initial offering and all underlying documentation should contain provisions facilitating the timely resolution of conflicts between different classes of note holders by the trustees, to the extent permitted by applicable law.

The party or parties with fiduciary responsibility to the securitisation and to investors should be able to demonstrate sufficient skills and resources to comply with their duties of care in the administration of the securitisation vehicle.

To increase the likelihood that those identified as having a fiduciary responsibility towards investors as well as the servicer execute their duties in full on a timely basis, remuneration should be such that these parties are incentivised and able to meet their responsibilities in full and on a timely basis.

14. Transparency to investors

Criteria

To help provide full transparency to investors, assist investors in the conduct of their due diligence and to prevent investors being subject to unexpected disruptions in cash flow collections and servicing, the contractual obligations, duties and responsibilities of all key parties to the securitisation, both those with a fiduciary responsibility and of the ancillary service providers, should be defined clearly both in the initial offering and all underlying documentation. Provisions should be documented for the replacement of servicers, bank account providers, derivatives counterparties and liquidity providers in the event of failure or non-performance or insolvency or other deterioration of creditworthiness of any such counterparty to the securitisation.

To enhance transparency and visibility over all receipts, payments and ledger entries at all times, the performance reports to investors should distinguish and report the securitisation's income and disbursements, such as scheduled principal, redemption principal, scheduled interest, prepaid principal,

past due interest and fees and charges, delinquent, defaulted and restructured amounts under debt forgiveness and payment holidays, including accurate accounting for amounts attributable to principal and interest deficiency ledgers.