

# An EU framework for simple, transparent and standardised securitisation

BSA Response to the European Commission's  
consultation

May 2015

 **Building Societies**  
Association

# Overview

The BSA is pleased to respond to the Commission's consultation on securitisation, part of its wider work towards a Capital Markets Union outlined in the Green Paper. We welcome the emphasis in the foreword to the Green Paper on jobs and growth, and that capital markets should complement bank financing. We also welcome the general approach taken by Commissioner Hill – asking the right questions, gathering the evidence, rather than announcing prescriptive regulation. Given our members' primary involvement in housing finance and savings rather than business finance or securities markets, we will concentrate on the securitisation consultation only.

We make two general comments. First, we note the implicit recognition in the joint consultation<sup>1</sup> by the European Central Bank and the Bank of England that some of the obstacles to securitisation are in fact regulatory in origin, and indeed that some of the post-crisis measures may have been counter-productive. So we support the re-appraisal of the overall attitude to securitisation signalled by this CP – a change from the tendency, both before, but particularly during and after the crisis, to stigmatise the whole technique. We welcome the clarity of the objectives stated on page 5 of the document.

Second, it is imperative that securitisation complements, but does not supplant, traditional bank lending. In the context of residential mortgages, the major threat remains a high, undifferentiated leverage ratio disadvantaging lenders – such as the BSA's members – who specialise in this low risk asset class. We therefore welcome the observation by Commissioner Hill, in a recent speech<sup>2</sup>, that introduction of the leverage ratio in the EU “is an issue where differentiation would be crucial”. And we support the comment in the CP that it is desirable to avoid a resurgence of the flawed “originate to distribute” models. But that resurgence will be the likely outcome if a high, undifferentiated leverage ratio, in parallel with a more benign securitisation regime, makes “originate to hold” uneconomic or uncompetitive.

We also have one important technical issue to raise. As many of our members are (in EU terms) small local / regional lenders, a single-originator securitisation transaction may simply not be cost-effective for them – their available asset pools may not be large enough to spread the overhead costs of issuing, or indeed to give investors a sufficiently diversified asset base. Multi-originator pooled issuance may provide a cost-effective route. So it is essential that new criteria, especially around simplicity and standardisation, must not discriminate against multi-originator pooled issuance – to do so would be anti-competitive, as it would favour the largest incumbent firms.

## Detailed response

The core business of all BSA members lies within traditional relationship banking: personal savings and mortgage lending. BSA members are not investment banks and do not structure complex transactions for others. Moreover, building societies are obliged by law to concentrate on retail savings and residential mortgages. Consistent with the relationship approach, BSA members primarily follow the “originate to hold” rather than “originate to distribute” model. We fully recognize the problems that have arisen during the financial crisis from unwise and irresponsible use of securitisation by others. But some of our largest members continue to make prudent and measured use of securitisation as originators, for risk transfer and capital relief, and /or for longer-term matched funding, and some may also invest in RMBS from time to time. The BSA therefore has an interest in maintaining an active, liquid and cost-effective market for securitization, as a complement to (but not a replacement for) its members’ traditional core business.

The BSA responded briefly to both the ECB / BoE consultation and the earlier Basel consultation. Our responses, which are available on our website, drew attention in particular to some of the adverse regulatory measures that maintain stigmatisation, and could frustrate the Commission’s objectives.

We have two other general points to raise. Even where regulatory criteria do not discriminate against multi-originator pooled RMBS issuance, this is likely to remain expensive for small lenders. Other pooled structures, such as multi-originator covered bonds, may prove more attractive both to small lenders as issuers, and to investors (due to more favourable treatment e.g. under Solvency II). Preferences as between covered bond and securitization structures also have a cultural and historical component – covered bonds developed in Europe, while securitization developed in the USA. Going forward, both should be viewed objectively. One element of this – missing in the consultation – is any treatment of the important issue of asset encumbrance (see Articles 100 and 443 of CRR).

Our responses to a few of the individual questions follow. We leave other organisations, with deeper technical expertise in securitisation, to provide comprehensive and detailed responses to all the Commission’s questions. The BSA belongs to the European Association of Co-operative Banks, and the BSA is pleased to support the fuller response submitted by the EACB.

**Question 1 – Identification criteria :** We are broadly content with some of the criteria suggested – e.g. on simplicity, no mixed pools of different asset types , derivatives only for hedging, and no re-securitisations. We raise two concerns : under simplicity, criteria must not discriminate against multi-originator issues (see above), while the requirement for the transfer to the SPV to be sufficiently robust ( i.e. a true sale ) should not be extended as far as “perfection of interest”. As explained in our response to the ECB /BoE consultation, if this requires full registered legal transfer at the point of original sale, it would be a major and disruptive departure from current practice (which has not proved problematic in the UK and arguably does not need to be changed). It would pose a particular problem for building societies as a fully perfected legal transfer will terminate the borrower’s membership of the society.

**Question 3 – Risk retention requirements :** These requirements may prove to have been a generalised over-reaction to the excesses before and during the crisis of the flawed “originate to distribute” model. By contrast, for regulated deposit-takers using securitisation as a prudent adjunct to other funding sources, and retaining on balance sheet the majority of the underlying asset class, the misalignment of interest is unlikely to arise. In those circumstances, it is not necessarily true that the retention obligation is either instrumental in ensuring robust underwriting standards, or necessary to ensure investor

confidence. Accordingly, risk retention requirements should be reduced for such regulated deposit takers.

**Question 4 : Compliance with criteria :** We agree that monitoring of compliance with qualifying criteria should help sustain investor confidence ( and particularly useful, we think, for smaller issues ).

**Question 5 – Further standardisation, an EU structure ?** We are not opposed in principle to an EU securitisation structure, but the need for such an instrument is not evident in the UK where our members securitise – existing structures seem to work well. A new EU structure would moreover be highly ambitious and difficult to achieve given the diversity of legal frameworks in member states. Moreover, other measures - stopping short of a new EU structure established by legal instrument – may well yield quicker benefits. We suggest that a new EU structure should not be the priority. A better approach might be for each member state to take steps to optimise access for smaller lenders – as has happened e.g. in Spain and Norway for covered bonds, where pan-EU investment has taken place.

**Question 6 Standardisation of disclosure :** We agree that consistency could help make both structuring and investing more efficient, provided it builds on existing practice rather than introducing a new and different standard. We think harmonisation around the existing ECB and Bank of England templates might provide an early win, as there is existing commonality.

**Question 8 Developing market infrastructure :** This is an important matter for smaller issuers, whose securities are already more difficult to place on account of reduced secondary liquidity. So we should question whether high grade, qualifying issues by smaller lenders face any obstacles – e.g. in terms of eligibility as central bank collateral, and the related question of acceptability as a liquid asset. Is there also, perhaps, a need for a smaller –ticket debt market (the equivalent of the Alternative Investment Market) with less onerous listing requirements ? Finally, we agree that the swaps collateralisation requirements could be reduced.

**Question 9 Capital requirements in CRR :** Again, possibly as an over-reaction to the crisis, we suspect that the capital charges for the highest- grade securitisations – AAA – are in fact too high, and the default statistics tend to support this conclusion.

**Question 10 –BCBS recommendations a good baseline ?** Not necessarily – they should be considered, but subjected to independent review. Some of the proposals went in the wrong direction. Two examples were widely canvassed at the time. First, holdings of high quality (e.g. AA ) senior notes appear to be treated less favourably than direct holdings of various kinds of individual loans – potentially ignoring both collateral and any credit enhancement. Second, the capital required for some securitisation tranches may end up higher than for the entire pool of underlying assets.

**Question 12 – Advance EU work alongside international work ?** Particularly given the Commission’s focus on jobs and growth, rather than re-fighting the battles of the financial crisis, the Commission’s EU workstream could provide a positive influence on the international work – and at the least, it is important that these workstreams do not proceed in divergent directions.

Note 1 : <http://www.bankofengland.co.uk/publications/Documents/news/2014/paper300514.pdf>

Note 2 : “A strong and stable banking system at the heart of Europe’s recovery”, Brussels 3 March 2015  
[http://europa.eu/rapid/press-release\\_SPEECH-15-4537\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-15-4537_en.htm)

Jeremy Palmer  
Head of Financial Policy  
jeremy.palmer@bsa.org.uk  
+44(20) 7520 5912

York House  
23 Kingsway  
London WC2B 6UJ

020 7520 5900  
@BSABuildingSocs  
www.bsa.org.uk

EU Transparency Register No: 9: 24933110421-64

[www.bsa.org.uk](http://www.bsa.org.uk)

The Building Societies Association (BSA) is the voice of the UK's building societies.

We fulfil two key roles. We provide our members with information to help them run their businesses. We also represent their interests to audiences including the Financial Conduct Authority, Prudential Regulation Authority and other regulators, the government and parliament, the Bank of England, the media and other opinion formers, and the general public.

Our members have total assets of over £330 billion, and account for approximately 20% of both the UK mortgage and savings markets