

# Legal Update

## EBA publishes its report on the creation of an STS framework for synthetic securitisations

### Introduction

The European Banking Authority (the “EBA”) has recently published its report on the feasibility of a framework for simple, transparent and standardised (“STS”) synthetic securitisations (the “EBA Report”)<sup>1</sup>. The EBA Report follows a discussion paper published by the EBA on 24 September 2019 (the “EBA Discussion Paper”)<sup>2</sup>. We considered some of the key aspects of the Discussion Paper in a previous legal update<sup>3</sup>.

The EBA has reaffirmed its recommendations in the EBA Discussion Paper for the establishment of a cross-sectoral framework for STS synthetic securitisation, limited to balance-sheet securitisations, and that for any synthetic securitisation to be STS, it should meet the specified STS criteria for such securitisations. In addition, the EBA has given further consideration to whether STS synthetic securitisations could benefit from differentiated regulatory treatment and has concluded that this could be justified for senior tranches subject to certain conditions.

In this Legal Update, we consider the proposals contained in the EBA Report, including the extent to which they diverge from the draft proposals in the EBA Discussion Paper.

Synthetic securitisations are used by banks to hedge the credit risk on portfolios of loans where those loans cannot easily be sold or if the bank otherwise wishes to retain an interest. In contrast to a true sale transaction, in a synthetic securitisation the loans being securitised are not sold and remain on the bank’s balance sheet. Instead, the bank buys credit protection on the loans from investors by means of either a financial guarantee or credit derivative which references the portfolio. The financial guarantee or credit derivative is entered into with an investor directly or with a special purpose vehicle which issues securities, the proceeds of which are used to collateralise the risk. If loans in the portfolio default, the bank is reimbursed for the losses incurred on those defaulted loans up to a maximum of the total amount invested. This way, the bank reduces the credit risk on the securitised loans while remaining in charge of managing the loans and the lending relationship with the borrowers.<sup>4</sup>

1 Report on STS Framework for Synthetic Securitisation Under Art. 45 of Regulation (EU) 2017/2402, published on 6 May 2020 and available at [https://eba.europa.eu/sites/default/documents/files/document\\_library/News%20and%20Press/Press%20Room/Press%20Releases/2020/EBA%20proposes%20Framework%20for%20STS%20Synthetic%20Securitisation/883430/Report%20on%20framework%20for%20STS%20synthetic%20securitisation.pdf](https://eba.europa.eu/sites/default/documents/files/document_library/News%20and%20Press/Press%20Room/Press%20Releases/2020/EBA%20proposes%20Framework%20for%20STS%20Synthetic%20Securitisation/883430/Report%20on%20framework%20for%20STS%20synthetic%20securitisation.pdf).

2 Draft Report on STS Framework for Synthetic Securitisation Under Art. 45 of Regulation (EU) 2017/2402, published on 24 September 2019 and available at <https://eba.europa.eu/regulation-and-policy/securitisation-and-covered-bonds/discussion-paper-on-sts-framework-for-synthetic-securitisation-under-art.-45-of-regulation-eu-2017/2402>.

3 Mayer Brown – Legal Update: EBA consults on the creation of an STS framework for synthetic securitisations, October 2019, available at <https://www.mayerbrown.com/en/perspectives-events/publications/2019/10/eba-consults-on-the-creation-of-an-sts-framework-for-synthetic-securitisations>.

4 “synthetic securitisation” is defined in Article 2(10) SR as “a securitisation where the transfer of risk is achieved by the use of credit derivatives or guarantees, and the exposures being securitised remain exposures of the originator”.

# Background to STS for Synthetic Securitisations

The EBA Report has been published pursuant to a mandate under Article 45 of the EU Securitisation Regulation<sup>5</sup> (the “**Securitisation Regulation**” or “**SR**”) which required the EBA, in close cooperation with ESMA<sup>6</sup> and EIOPA<sup>7</sup>, to report on the feasibility of a framework for STS synthetic securitisations.

The Securitisation Regulation has been applicable to all securitisations (as defined therein)<sup>8</sup> from 1 January 2019, other than securitisations existing prior to that date if they are grandfathered. It includes requirements for securitisation special purpose entities (“**SSPEs**”), due diligence, risk retention, transparency and credit-granting standards and a ban on resecuritisation. It also established a framework for STS securitisation, which currently only applies to traditional securitisations<sup>9</sup> as opposed to synthetic securitisations.

One of the aims of the STS regime is to foster the growth of the securitisation market. There is a separate set of STS criteria in the Securitisation Regulation for non-ABCP securitisations and ABCP

securitisations (although many of the criteria are similar at transaction level).<sup>10</sup> The EBA has published helpful guidance on the existing STS criteria.<sup>11</sup>

Securitisations which meet the applicable STS criteria may benefit from relatively favourable regulatory treatment compared with non-STS securitisations. For example, if a securitisation is designated as STS and also meets various additional requirements under the Capital Requirements Regulation (as amended, the “**CRR**”), pursuant to the EU Regulation which was introduced at the same time as the Securitisation Regulation and which amended the CRR<sup>12</sup> (the “**CRR Amending Regulation**”), an EU regulated bank that invests in or otherwise takes credit exposure to that securitisation will have a lower capital charge for that exposure than would otherwise apply under the CRR.<sup>13</sup> In addition, a transaction which qualifies as STS will also benefit from lower capital requirements for insurance and reinsurance undertakings subject to regulation under Solvency II<sup>14</sup> and will be eligible for inclusion in high quality liquid assets by banks for the purposes of the Liquidity Coverage Ratio (subject in each case to meeting certain additional criteria).<sup>15</sup>

---

5 Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EC and Regulations (EC) No 1060/2009 and (EU) No 648/2012, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/%20%20PDF/?uri=CELEX:32017R2402&from=EN>.

6 The European Securities and Markets Association.

7 The European Insurance and Occupational Pensions Authority.

8 Under Article 2(1) SR, “securitisation” means “a transaction or scheme, whereby the credit risk associated with an exposure or a pool of exposures is tranching, having all of the following characteristics:

- (a) payments in the transaction or scheme are dependent upon the performance of the exposure or of the pool of exposures;
- (b) the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme;
- (c) the transaction or scheme does not create exposures which possess all of the characteristics listed in Article 147(8) of Regulation (EU) No 575/2013”.

9 “traditional securitisation” is defined in Article 2(9) SR as “a securitisation involving the transfer of the economic interest in the exposures being securitised through the transfer of ownership of those exposures from the originator to an SSPE or through sub-participation by an SSPE, where the securities issued do not represent payment obligations of the originator”.

---

10 In addition, there are separate criteria for ABCP transactions, which need to meet certain transaction-level requirements, and ABCP programmes, which need to meet certain sponsor requirements and programme-level requirements, including that (except for certain limited temporary exceptions) all transactions in the ABCP programme are STS.

11 Final Guidelines on STS criteria for non-ABCP securitisation and Final Guidelines on STS criteria for ABCP securitisation, available at <https://eba.europa.eu/regulation-and-policy/securitisation-and-covered-bonds/>.

12 Regulation (EU) 2017/2401 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R2401>.

13 Articles 260, 262 and 264 of the CRR.

14 Pursuant to the terms of Commission Delegated Regulation (EU) 2018/1221 of 1 June 2018 amending Delegated Regulation (EU) 2015/35 as regards the calculation of regulatory capital requirements for securitisations and simple, transparent and standardised securitisations held by insurance and reinsurance undertakings.

15 Pursuant to the terms of Commission Delegated Regulation (EU) 2018/1620 of 13 July 2018 amending Delegated Regulation (EU) 2015/61 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for credit institutions, Article 1(8) (amending Article 13 of Delegated Regulation 2015/61).

An STS transaction will also be eligible for investment by money market funds subject to the Money Market Funds Regulation.<sup>16</sup> As at the date of this Legal Update, over 250 STS securitisations have been notified to ESMA.<sup>17</sup> According to a recent publication by PCS, this means that “[e]ffectively, almost all transactions publically placed with investors since March 2019 and which may achieve the STS standard have elected to do so”.<sup>18</sup> STS treatment is now being sought for an increasing number of private transactions. Achieving STS treatment is therefore now an established and significant aspect of the European and UK securitisation market.

Synthetic securitisations were originally excluded from the STS regime under the Securitisation Regulation due to concerns regarding additional counterparty credit risk and potential complexity. However, the Securitisation Regulation included the mandate in Article 45 because it was recognised that balance sheet synthetic securitisations can promote financing of the real economy and in particular SMEs.

Synthetic securitisations are commonly employed by financial institutions for balance sheet management purposes, to achieve significant risk transfer of balance sheet assets in order to benefit from regulatory capital relief<sup>19</sup> or to achieve credit risk mitigation and free up credit lines for further lending.<sup>20</sup> Many market participants have been keen for synthetic securitisations to be put on an equal footing with “traditional” securitisations as regards STS, and importantly, that better regulatory capital treatment can be obtained for synthetic securitisations in recognition of their meeting the STS requirements.

16 Commission Delegated Regulation (EU) 2018/990 of 10 April 2018 amending and supplementing Regulation (EU) 2017/1131 of the European Parliament and of the Council with regard to simple, transparent and standardised (STS) securitisations and asset-backed commercial papers (ABCPs), requirements for assets received as part of reverse repurchase agreements and credit quality assessment methodologies, Article 1 (amending Article 13(1)(c) of Regulation (EU) 2017/1131 on money market funds).

17 See the register at <https://www.esma.europa.eu/policy-activities/securitisation/simple-transparent-and-standardised-sts-securitisation>.

18 Relaunching securitisation in the EU, April 2020, PCS, available at [https://www.eurofi.net/wp-content/uploads/2020/04/relaunching-securitisation-in-the-eu\\_zagreb\\_april20.pdf](https://www.eurofi.net/wp-content/uploads/2020/04/relaunching-securitisation-in-the-eu_zagreb_april20.pdf).

19 See the EBA Discussion Paper on SRT, as defined below.

20 See paragraph 29 of the EBA Report. Traditional true sale securitisations by contrast are more commonly used as a funding tool than a balance sheet management tool, see paragraph 74 of the EBA Report.

## STS Criteria for Synthetic Securitisations

The EBA Report acknowledges the wider background to the subject of an STS framework for synthetic securitisations. Firstly, Article 270 of the CRR already allows for preferential regulatory treatment of synthetic securitisations on a limited basis, with respect to senior tranches of SME portfolios retained by originator credit institutions, provided that significant credit risk has been transferred to either supranational entities (central governments, central banks, multilateral development banks or international organisations) that are 0% risk weighted through unfunded guarantees or to private investors through fully collateralised guarantees.

In addition, the EBA also published a report on synthetic securitisation in December 2015,<sup>21</sup> in which it proposed extending differentiated regulatory capital treatment to senior retained tranches where the credit risk of the non-retained tranches has been transferred to private investors and where the credit protection has been fully cash-funded, with the relevant criteria being based on the criteria for traditional securitisations, amended as appropriate. Furthermore, the EBA discussion paper on significant risk transfer published in September 2017 (the “**EBA Discussion Paper on SRT**”)<sup>22</sup> is also relevant to the discussion as the concept of significant risk transfer is important for synthetic securitisation.

In the EBA Report, the EBA confirmed its preliminary recommendations for the establishment of an STS framework for balance-sheet synthetic securitisations, and that this should be based on the specified STS criteria. It states “There are no material negative consequences, but there are a number of positive benefits for banks, the financial market and financial stability in general from the introduction of such a product.”<sup>23</sup>

21 The EBA Report on Synthetic Securitisation, available at <https://eba.europa.eu/sites/default/documents/files/documents/10180/983359/03ed077f-cdf9-4f6c-901b-fb7fda0e44a3/EBA-Op-2015-26%20EBA%20report%20on%20synthetic%20securitisation.pdf>.

22 EBA Discussion Paper on the Significant Risk Transfer in Securitisation, published on 19 September 2017, available at [https://eba.europa.eu/sites/default/documents/files/documents/10180/1963391/228098e3-29ba-473f-9e4c-680ce32e1869/Discussion%20Paper%20on%20the%20Significant%20Risk%20Transfer%20in%20Securitisation%20\(EBA-DP-2017-03\).pdf](https://eba.europa.eu/sites/default/documents/files/documents/10180/1963391/228098e3-29ba-473f-9e4c-680ce32e1869/Discussion%20Paper%20on%20the%20Significant%20Risk%20Transfer%20in%20Securitisation%20(EBA-DP-2017-03).pdf).

23 The EBA Report, paragraph 113.

The EBA Report sets out the proposed STS criteria for synthetic securitisations, based on the criteria in the EBA Discussion Paper. The criteria are modelled closely on the STS criteria for non-ABCP securitisations in order to maintain consistency across the STS label, but are amended with respect to certain aspects which are relevant for a synthetic securitisation and include some additional criteria specific to synthetic transactions. In the EBA Report, there are 35 separate criteria (down from 36), organised under four headings. "Simplicity" has 12 (down from 13) criteria. These include criteria in relation to representations and warranties, borrower creditworthiness and originator expertise. "Standardisation" has 10 criteria, including in relation to risk retention requirements, transaction documentation and servicer expertise. "Transparency" has 5 criteria, including in relation to data on historical defaults. Finally, "Requirements specific to synthetic securitisations", has 8 criteria including criteria in relation to credit events, credit protection payments and verification agents. The annex contains a summary of all of the proposed STS criteria and a comparison to the STS criteria for non-ABCP securitisations.

The most significant changes to the STS criteria initially proposed in the EBA Discussion Paper are as follows:

- (a) Criterion 1 (*Balance sheet synthetic securitisation, credit risk mitigation*): the protection buyer is no longer required to be an institutional investor (as defined in the Securitisation Regulation) but needs to be subject to an authorisation/licensing regime and established in the EU, as well as being an originator as defined in the Securitisation Regulation. The relevant exposures may be held on the balance sheet of a member of the same corporate group as the protection buyer.
- (b) Criterion 3 (*Eligibility criteria, no active portfolio management*): whilst active portfolio management is still prohibited, underlying exposures may be sold out of the transaction where this is in the ordinary course of business of the protection buyer and provided it does not constitute implicit support under Article 250 of the CRR.
- (c) Criterion 4 (*Homogeneity, enforceable obligations, full recourse to obligors, periodic payment streams*): the payment streams relating to the underlying exposures may now include commitment fees, as some synthetic securitisations include exposures which are unused credit lines.
- (d) The previous criterion 13 (*No embedded maturity transformation*) (requiring that repayment should not be dependent predominantly on the refinancing or the resale value of the assets) has been deleted.
- (e) Criterion 14 (*Appropriate mitigation of interest rate and currency risks*): this has been modified from the previous wording that said that the protection buyer should bear no currency or interest rate risk. Instead, the transaction documents need to clearly describe how any currency risk and interest rate risk will affect payments to the protection buyer and the investors and how any interest rate risk will be mitigated.
- (f) Criterion 16 (*Requirements after enforcement notice*) has been clarified to provide that following the occurrence of an enforcement event in respect of the protection buyer, the protection seller should be permitted to take enforcement action and/or terminate the credit protection agreement, and in the case of funded credit protection, the collateral should be returned to investors in order of their seniority. While cash should generally not be trapped in the SSPE, this may be used for the payment of protection payments in respect of defaulting underlying exposures that are still being worked out at the time of termination, as well as for the operational functioning of the SSPE or the orderly repayment of investors.
- (g) Criterion 17 (*Allocation of losses and amortisation of tranches*): both pro-rata and "hybrid" amortisation structures (i.e. comprising a combination of pro rata and sequential, or pro rata applying to only some tranches) are permitted, provided that appropriate triggers are included to switch to full sequential amortisation if the creditworthiness of the underlying exposures declines.

- (h) Criterion 22 (*Reference register*): the outstanding protected notional amount for each underlying exposure is required to be disclosed (as opposed to the outstanding notional amount of each underlying exposure).
- (i) Criterion 28 (*Credit events*): restructuring has been excluded as a required credit event in the case of financial guarantees, in order to avoid them being treated as a derivative in accordance with the relevant accounting standards, and accordingly being valued on a mark-to-market basis for accounting purposes.
- (j) Criterion 34 (*Synthetic excess spread*): contrary to the draft criterion set out in the EBA Discussion Paper, excess spread would now be available as credit enhancement for investors, subject to the satisfaction of certain conditions.
- (k) Criterion 35 (*Eligible credit protection agreement, counterparties and collateral*): eligible collateral under credit protection arrangements establishing the synthetic securitisation has been expanded to include cash on deposit with the protection buyer. Any cash collateral with the protection buyer or a third party credit institution is subject to a minimum credit quality standing requirement, i.e. if it ceases to have the required minimum rating, it should transfer the collateral to an entity with the required rating or invest it in high quality securities held by a custodian.

In addition, various other clarifications and amendments have been made.

The EBA has addressed a significant number (although not all) of the comments made in response to the EBA Discussion Paper in the revised STS criteria. We expect that market participants will generally welcome the additional flexibility provided by the changes to the proposed STS criteria, for example, the ability to use excess spread as credit enhancement and to put cash on deposit with the protection buyer rather than a third party bank.

## Differentiated Regulatory Capital Treatment for Synthetic Securitisations which are STS

In the EBA Report, the EBA distinguishes between the desirability of a STS synthetic product and a more risk-sensitive regulatory treatment of such STS product. In the EBA Discussion Paper, the EBA recommended the establishment of an STS framework for balance sheet synthetic securitisations requiring compliance with the related STS criteria but reserved its position on whether a synthetic STS should attract preferential regulatory treatment. Whilst it could be beneficial to general market functioning to encourage simple, transparent and standardised synthetic securitisations, unless there is an incentive for an institution to enter into such a transaction due to, for instance, regulatory capital benefits, it is unclear whether this would provide sufficient impetus to the synthetic STS market, and in addition, it seems logical that if a securitisation meets the STS standard then it should be able to benefit from a more risk-sensitive regulatory capital treatment.

However the EBA has proposed only a “limited differentiated regulatory treatment, rather than a fully-fledged preferential regulatory framework” on the basis of various pros and cons which it has identified. The pros have been identified as (a) alignment with the performance of balance sheet securitisations, (b) the ability to overcome the constraints of the current limited STS risk-weight treatment of SME products, (c) regulatory alignment with traditional securitisations and (d) the positive impact on financial markets and stability. The cons have been identified as (a) preferential treatment has not been included in the Basel securitisation framework, (b) the potential increased risks for the banking sector, (c) limited experience of the current STS framework and (d) potential overuse.

It is envisaged that such limited preferential regulatory capital treatment would take the form of an adjustment to the prudential floor and corresponding adjustments of the risk weights for the senior tranche of a synthetic securitisation, which are typically retained by the originating financial institution, to be consistent with the treatment under the current STS framework.<sup>24</sup>

Such differentiated treatment for a position in a synthetic securitisation would be contingent on satisfying the following conditions:

- (a) the securitisation meets all the STS requirements for a synthetic securitisation;
- (b) the securitisation meets the criteria in Article 243(2) of the amended CRR (which sets out additional criteria which need to be met in order for an STS securitisation to benefit from preferential regulatory capital treatment;
- (c) the securitisation is a balance sheet synthetic securitisation;
- (d) the position is retained by the originating credit institution;
- (e) the position qualifies as the senior securitisation position;
- (f) the differentiated regulatory treatment is limited to regulatory capital treatment (i.e. it would not extend to the liquidity treatment, etc.).

The EBA Report reiterates the EBA's concerns with a differentiated capital treatment, such as data limitations, limited experience of the STS framework in general, exclusion of synthetic securitisations from the Basel STC (simple, transparent and comparable) framework and the possibility that it could incentivise banks to increase leverage, and as a result recommended that if differentiated regulatory capital treatment is introduced, the EBA should be mandated to monitor the functioning of the STS synthetic market, the use of such differentiated capital treatment and whether or not this might result in excessive leverage and replace the issuance of capital instruments.

---

<sup>24</sup> This would involve recalibration under the formula-based approaches and would include a 50% haircut of the  $p$  parameter and recalibration of the external ratings based approach, resulting in lower risk weights. Further details of the relevant calculations have not been provided.

We anticipate that the EBA's response with respect to regulatory capital treatment, while limited, will be broadly welcomed by market participants and seen as a positive development.

## Next Steps

Article 45(2) of the Securitisation Regulation requires the European Commission (the "**Commission**"), on the basis of the EBA Report, to publish a report to the European Parliament and the Council on the creation of an STS framework for synthetic securitisations with appropriate legislative proposals. This report was originally due by 2 January 2020, but as the EBA Report has been delayed by some 10 months, the Commission's report will also be delayed.<sup>25</sup>

Market participants who are involved in or who may wish to carry out synthetic securitisations will no doubt be keen to see the Commission report as soon as possible, and will be hoping not only for an STS framework for synthetic securitisations as for traditional securitisations, but also for more risk-sensitive and preferential regulatory capital treatment for those synthetic securitisations that meet the STS criteria. In addition, in the current period of economic uncertainty, an STS framework for synthetic deals and a differentiated regulatory treatment could well be seen as beneficial allowing banks to free up regulatory capital and their balance sheets in order to fund the real economy.

---

<sup>25</sup> It remains to be seen whether an STS regime will apply in the United Kingdom after the Brexit transition period (which will end on 31 December 2020, unless it is extended). Please see our Legal Update "Securitisations after Brexit – Considerations for Securitisations Involving UK Entities", available at <https://www.mayerbrown.com/en/perspectives-events/publications/2020/02/after-brexit-considerations-for-securitisations-involving-uk-entitie>, for a discussion of the application of EU law in the United Kingdom during and after the Brexit transition period.

# Annex

## SUMMARY OF PROPOSED STS CRITERIA FOR SYNTHETIC SECURITISATION AND COMPARISON WITH STS CRITERIA FOR NON ABCP TRADITIONAL SECURITISATION

Proposed criteria for synthetic securitisations	Non-ABCP traditional securitisations
<i>Simplicity</i>	
<p><b>Criterion 1: Balance sheet synthetic securitisation, credit risk mitigation</b></p> <p><i>Replacement of the criteria on true sale/ assignment, clawback risk, perfection triggers and representation that assets are not encumbered in Articles 20(1)-(5) SR with definition of balance sheet synthetics and requirement to ensure robustness of credit protection contract (credit risk mitigation criteria).</i></p> <ul style="list-style-type: none"> <li>• Securitisation should meet definition of “synthetic securitisation”.</li> <li>• Protection buyer must be an EU-regulated entity subject to authorisation/licensing regime that is established in the EU and an “originator” as defined in the Securitisation Regulation with respect to the underlying exposures.</li> <li>• Where the protection buyer is a limb (b) originator the originator should apply policies that are no less stringent than those applied to similar exposures that have not been purchased.</li> <li>• Underlying exposures are part of core lending or core business activity of protection buyer.</li> <li>• Underlying exposures are held on the balance sheet of the protection buyer (or a member of the same corporate group as the protection buyer).</li> <li>• Undertaking not to further hedge exposure to credit risk.</li> </ul>	<p>Legal true sale; no severe clawback risk.<sup>26</sup></p> <p>Specified perfection triggers including severe deterioration in seller’s credit quality, seller insolvency and seller breaches.<sup>27</sup></p>

<sup>26</sup> SR Article 20(1)-(4).

<sup>27</sup> SR Article 20(5).

Proposed criteria for synthetic securitisations	Non-ABCP traditional securitisations
<p><b>Criterion 2: Representations and warranties</b></p> <p><i>Representations and warranties adapted and extended to synthetic securitisation.</i></p> <p>Protection buyer must represent and warrant that:</p> <ul style="list-style-type: none"> <li>• It (or a member of the same corporate group) has title to the underlying exposures and, where it is a credit institution or insurance company, it accounts for their credit risk in the regulatory balance sheet.</li> <li>• On the date it is included in the securitised portfolio, each underlying exposure complies with all eligibility criteria and any other conditions (other than a credit event) for a protection payment under the credit protection agreement.</li> <li>• To the best of the protection buyer’s knowledge, the underlying agreements contain a legal, valid, binding and enforceable obligation of the obligor to pay the specified sums of money.</li> <li>• Underlying exposures meet standard underwriting criteria and these are no less stringent than those applied to similar exposures of the originator which are not securitised.</li> <li>• To the best of the protection buyer’s knowledge, no material breach or default of obligors in relation to the underlying exposures.</li> <li>• To the best of the protection buyer’s knowledge, no untrue information with respect to the underlying exposures.</li> </ul>	<p>Seller to represent that assets not encumbered and no adverse effect on enforceability of the sale.<sup>28</sup></p>

<sup>28</sup> SR Article 20(6).



Proposed criteria for synthetic securitisations	Non-ABCP traditional securitisations
<p><b>Criterion 3: Eligibility criteria, no active portfolio management</b></p> <p><i>Criterion adapted.</i></p> <p>Underlying exposures meet predetermined, clear and well-documented eligibility criteria determining their eligibility for protection under the credit protection agreement.</p> <p>No active portfolio management on discretionary basis. (Substitution of exposures that are in breach of representations and warranties, and addition of exposures meeting defined conditions during a replenishment period, are permitted.)</p> <p>Later transferred assets must meet eligibility criteria that are no less strict than those applied to the initial exposures.</p> <p>An exposure may only be removed where it:</p> <ul style="list-style-type: none"> <li>• has been repaid or otherwise matured;</li> <li>• has been disposed of during the ordinary course of the protection buyer's business, provided such a removal would not constitute implicit support for the purposes of Article 250 of the CRR;</li> <li>• is subject to a refinancing, restructuring or similar non-credit driven amendment; or</li> <li>• it did not meet the eligibility criteria due to an error in the underlying exposures.</li> </ul>	<p>Underlying exposures meet predetermined, clear and documented eligibility criteria.</p> <p>No active portfolio management on discretionary basis. (Substitution of exposures that are in breach of representations and warranties is permitted.)</p> <p>Later transferred assets must meet eligibility criteria that applied to the initial exposures.<sup>29</sup></p>
<p><b>Criterion 4: Homogeneity, enforceable obligations, full recourse to obligors, period payment streams</b></p> <p><i>Similar</i></p> <p>Assets must be homogeneous as to asset type, subject to clearly defined and specified conditions.</p> <p>Obligations to pay must be contractually binding and enforceable, with full recourse to debtors and, where applicable, guarantors.</p> <p>Defined periodic payments required, relating to rental, principal and interest payments or commitment fees, or any other right to receive income from the assets.</p> <p>Proceeds may be generated from sale of financed or leased assets.</p>	<p>Assets must be homogeneous as to asset type.</p> <p>Obligations must be contractually binding and enforceable, with full recourse to debtors and, where applicable, guarantors.</p> <p>Defined periodic payments required, relating to rental, principal or interest payments, or any other right to receive income from the assets.</p> <p>Proceeds may be generated from sale of financed or leased assets.<sup>30</sup></p>

<sup>29</sup> SR Article 20(7).

<sup>30</sup> SR Article 20(8).

Proposed criteria for synthetic securitisations	Non-ABCP traditional securitisations
<p><b>Criterion 5: No transferrable securities</b></p> <p><i>Same</i></p> <p>No transferable securities other than unlisted corporate bonds.</p>	<p>No transferable securities other than unlisted corporate bonds.<sup>31</sup></p>
<p><b>Criterion 6: No resecuritisation</b></p> <p><i>Same</i></p> <p>Assets cannot include securitisation positions.</p>	<p>Assets cannot include securitisation positions.<sup>32</sup></p>
<p><b>Criterion 7: Underwriting standards and material changes thereto</b></p> <p><i>Adapted</i></p> <p>The underwriting standards pursuant to which the underlying exposures are originated and any material changes from prior underwriting standards should be fully disclosed to potential investors without undue delay.</p> <p>The underlying exposures are underwritten with full recourse to an obligor that is an individual, an SME or a corporate body and that is not a special purpose entity.</p> <p>No broker intermediary or similar party was involved in the credit or underwriting decisions relating to the underlying exposures.</p>	<p>Assets must have been originated in ordinary course.</p> <p>Credit underwriting criteria to be no less stringent than for retained assets and must be disclosed.<sup>33</sup></p>
<p><b>Criterion 8: Self-certified Loans</b></p> <p><i>Similar</i></p> <p>No “self-certified” residential mortgage loans.</p>	<p>No “self-certified” residential mortgage loans.<sup>34</sup></p>
<p><b>Criterion 9: Borrower’s creditworthiness</b></p> <p><i>Similar</i></p> <p>Assessment of borrower’s creditworthiness to meet regulatory requirements to the extent that such standards would apply to the individual underlying exposures.</p>	<p>Assessment of borrower’s creditworthiness to meet regulatory requirements.<sup>35</sup></p>
<p><b>Criterion 10: Originator’s expertise</b></p> <p><i>Same</i></p> <p>Originator should have expertise in originating exposures of a similar nature to those securitised.</p>	<p>Originator should have expertise in originating exposures of a similar nature to those securitised.<sup>36</sup></p>

31 SR Article 20(8).

32 SR Article 20(9).

33 SR Article 20(10).

34 SR Article 20(10).

35 SR Article 20(10).

36 SR Article 20(10).

Proposed criteria for synthetic securitisations	Non-ABCP traditional securitisations
<p><b>Criterion 11: No defaulted exposures or exposures subject to outstanding disputes</b></p> <p><i>Similar</i></p> <p>At time of selection, underlying exposures should not include assets in default (as per Article 178(1) CRR) or exposures to credit-impaired obligors (as further specified) (to best of originator's knowledge in certain cases only).</p>	<p>Underlying exposures to be transferred to the SSPE after selection without undue delay and shall not include, at time of selection, assets in default (as per Article 178(1) CRR) or to the best of the originator's knowledge, exposures to credit-impaired obligors (as further specified).<sup>37</sup></p>
<p><b>Criterion 12: At least one payment made</b></p> <p><i>Similar</i></p> <p>At time of inclusion of the exposures in the securitisation, at least one payment has been made (excluding revolving securitisations in which exposures are payable in one instalment or with a maturity of &lt; 1 year). This criterion does not apply to an exposure that represents the refinancing of a pre-existing exposure already included in the securitisation.</p>	<p>At time of transfer of the exposures, at least one payment has been made (except in the case of revolving securitisations with assets payable in one instalment or with a maturity of &lt; 1 year).<sup>38</sup></p>
<p><b>Standardisation</b></p>	
<p><b>Criterion 13: Risk retention requirements</b></p> <p><i>Similar</i></p> <p>Risk retention by originator or original lender per Article 6 SR.</p>	<p>Risk retention by originator, sponsor or original lender per Article 6 SR.<sup>39</sup></p>

<sup>37</sup> SR Article 20(11).

<sup>38</sup> SR Article 20(12).

<sup>39</sup> SR Article 21(1).

Proposed criteria for synthetic securitisations	Non-ABCP traditional securitisations
<p><b>Criterion 14: Appropriate mitigation of interest rate and currency risks</b></p> <p><i>Adapted</i></p> <p>Documentation should clearly describe how any currency risk arising in synthetic securitisation will affect payments to the protection buyer and the investors.</p> <p>To the extent applicable, any collateral securing the credit protection obligation must be denominated in the same currency as that used for the credit protection.</p> <p>Documentation should clearly describe how any interest rate risk associated with synthetic securitisation will be mitigated and what impact it will have on payments to the protection buyer.</p> <p>SSPE's liabilities in terms of interest payments to investors should be equal to or less than the amount of its income from the protection buyer and any collateral arrangements.</p> <p>No derivatives in underlying exposures except for the purpose of hedging interest rate or currency risk. Such derivatives to meet common standards.</p>	<p>Interest rate and currency risks appropriately mitigated.</p> <p>No derivatives except for the purpose of hedging interest rate or currency risk. Such derivatives to meet common standards.<sup>40</sup></p>
<p><b>Criterion 15: Referenced interest payments</b></p> <p><i>Similar</i></p> <p>Interest payments in relation to securitisation should be based on (a) market rates or "sectoral" cost of funds, with no reference to complex formulae or derivatives and/or (b) income generated by the collateral securing the protection seller's obligations under the credit protection agreement.</p> <p>Interest payments in relation to the underlying exposure should be based on market rates or "sectoral" cost of funds, with no reference to complex formulae or derivatives.</p>	<p>Interest payments under the securitisation assets and liabilities should be based on market rates or "sectoral" cost of funds, with no reference to complex formulae or derivatives.<sup>41</sup></p>

40 SR Article 21(2).

41 SR Article 21(3).

Proposed criteria for synthetic securitisations	Non-ABCP traditional securitisations
<p><b>Criterion 16: Requirements after enforcement notice</b></p> <p><i>Adapted</i></p> <p>Following the occurrence of an enforcement event in respect of the protection buyer, the protection seller should be permitted to take enforcement action and/or terminate the credit protection agreement. In the case of funded credit protection, upon such termination, collateral should be returned to investors in order of their seniority.</p> <p>Where an SSPE is used within a synthetic securitisation, after enforcement or termination of the credit protection agreement, no cash trapping in the SSPE beyond what is necessary to ensure the operational functioning of the SSPE, the payment of protection payments in respect of defaulted underlying exposures that are still being worked out at the time of such a termination or the orderly repayment of investors, in accordance with the contractual terms of the securitisation.</p>	<p>After enforcement or acceleration notice, no cash trapping 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 except in exceptional circumstances.</p> <p>Principal receipts to be applied via sequential amortisation. Repayment of securitisation positions not to be reversed with regard to seniority. No automatic liquidation at market value.<sup>42</sup></p>
<p><b>Criterion 17: Allocation of losses and amortisation of tranches</b></p> <p><i>Adapted</i></p> <p>Allocation of losses to holders of a securitisation position in a synthetic STS securitisation should always proceed in order of seniority of tranches, from the most junior tranche to the most senior tranche in the transaction.</p> <p>Pro-rata or hybrid (i.e. comprising a combination of pro rata and sequential, or pro rata applying to only some tranches) amortisation may only be applied to determine the outstanding amount of all tranches if clearly specified triggers relating to the performance of the underlying exposures ensure the switch of the amortisation scheme to sequential amortisation, including deterioration in credit quality of assets below specified threshold. When this is not the case, sequential amortisation to apply to all tranches.</p> <p>Collateral provided to be returned to investors as tranches amortise.</p> <p>Amortisation agreements to be clearly documented.</p>	<p>Non-sequential priority of payments must include triggers for sequential payments, including deterioration in credit quality of assets below specified threshold.<sup>43</sup></p>

42 SR Article 21(4).

43 SR Article 21(5).

Proposed criteria for synthetic securitisations	Non-ABCP traditional securitisations
<p><b>Criterion 18: Early amortisation provisions/ triggers for termination of the revolving period</b></p> <p><i>Adapted</i></p> <p>For revolving securitisations, appropriate triggers to be included for termination of revolving period and a switch to the amortisation of tranches, including:</p> <ul style="list-style-type: none"> <li>• deterioration in credit quality of underlying exposures below predetermined threshold;</li> <li>• losses that rise above a predetermined threshold, or losses over a predefined period that rise above a predetermined threshold;</li> <li>• failure to generate sufficient new underlying exposures that meet the predetermined credit quality over a specified period of time.</li> </ul>	<p>For revolving securitisations, specified triggers for termination of revolving period:</p> <ul style="list-style-type: none"> <li>• deterioration in credit quality of underlying exposures below predetermined threshold;</li> <li>• originator or servicer insolvency-related event;</li> <li>• value of underlying exposures falls below predetermined threshold (early amortisation event;)</li> <li>• failure to generate sufficient new underlying exposures of the required credit quality (termination of revolving period).<sup>44</sup></li> </ul>
<p><b>Criterion 19: Transaction documentation</b></p> <p><i>Adapted</i></p> <p>Transaction documents to specify clearly:</p> <ul style="list-style-type: none"> <li>• contractual obligations of verification agent, servicer of the underlying exposures, trustee and other service providers;</li> <li>• provisions for replacement of counterparties on default/insolvency other than protection buyer and investor where the services are not provided by the originator;</li> <li>• provisions for continuity of servicing on servicer default/insolvency when servicing is not provided by the originator;</li> <li>• servicing procedures applicable to underlying exposures at closing and thereafter and how/ when these procedures may be modified;</li> <li>• servicing standards of servicer in servicing underlying exposures to maturity.</li> </ul>	<p>Transaction documents to specify clearly:</p> <ul style="list-style-type: none"> <li>• contractual obligations of servicer, trustee and other service providers;</li> <li>• provisions for continuity of servicing on servicer default/insolvency;</li> <li>• provisions for replacement of hedge counterparties, liquidity providers and account bank.<sup>45</sup></li> </ul>
<p><b>Criterion 20: Servicer's expertise</b></p> <p><i>Similar</i></p> <p>Servicer expertise in servicing similar exposures supported by a management team with extensive industry experience.</p> <p>Servicer to have well documented policies, procedures and controls.</p> <p>Servicer to apply servicing procedures that are at least as stringent as applied to similar exposures that are not securitised.</p>	<p>Servicer expertise in servicing similar exposures.</p> <p>Servicer to have well documented policies, procedures and controls.<sup>46</sup></p>

44 SR Article 21(6).

45 SR Article 21(7).

46 SR Article 21(8).

Proposed criteria for synthetic securitisations	Non-ABCP traditional securitisations
<p><b>Criterion 21: Reference register</b></p> <p>Criterion on definitions and remedies in transaction documents replaced, requirement for transaction documents to specify payment conditions is covered in separate criteria</p> <p>The underlying exposures should be identified at all times via a reference register. The reference register should clearly identify, at all times, the reference obligors, the reference obligations from which the underlying exposures arise, and the protected notional amount and the outstanding protected notional amount for each underlying exposure.</p>	<p>Transaction documents to set out in clear and consistent terms definitions, remedies and actions regarding delinquency, default etc.</p> <p>Priorities of payment and triggers for changes to priorities of payment to be specified. Material changes to the priority of payments to be reported to investors.<sup>47</sup></p>
<p><b>Criterion 22: Timely resolution of conflicts between investors</b></p> <p><i>Similar</i></p> <p>Provisions for timely resolution of conflicts between classes of investors.</p> <p>If an SSPE is used within a synthetic securitisation to issue notes placed with investors, clearly defined voting rights allocated to noteholders and clearly identified responsibilities of trustee.</p>	<p>Provisions for timely resolution of conflicts between classes of investors; clearly defined voting rights allocated to noteholders, clearly identified responsibilities of trustee.<sup>48</sup></p>
<p><b>Transparency</b></p>	
<p><b>Criterion 23: Data on historical default and loss performance</b></p> <p><i>Similar</i></p> <p>Historical data on defaults and losses for similar exposures to be provided by originator before pricing. &gt; 5 years of data.</p>	<p>Historical data on defaults and losses for similar exposures to be provided by originator and sponsor before pricing. &gt; 5 years of data.<sup>49</sup></p>
<p><b>Criterion 24: External verification of the sample</b></p> <p><i>Similar</i></p> <p>Third party verification of asset sample by "appropriate and independent party" before closing, including verification that the underlying exposures meet the criteria determining eligibility for credit protection under the credit protection agreement.</p>	<p>Third party verification of asset sample by "appropriate and independent party" before issuance.<sup>50</sup></p>

47 SR Article 21(9).

48 SR Article 21(10).

49 SR Article 22(1).

50 SR Article 22(2).

Proposed criteria for synthetic securitisations	Non-ABCP traditional securitisations
<p><b>Criterion 25: Liability cash flow model</b></p> <p><i>Similar</i></p> <p>Provision of liability cash flow model to investors before pricing and on ongoing basis.</p>	<p>Provision of liability cash flow model to investors before pricing and on ongoing basis.<sup>51</sup></p>
<p><b>Criterion 26: Environmental performance of assets</b></p> <p><i>Similar</i></p> <p>For residential loans and auto loans or leases, disclosure of environmental performance by originator per Article 7 SR.</p>	<p>For residential loans and auto loans or leases, disclosure of environmental performance by originator and sponsor per Article 7 SR.<sup>52</sup></p>
<p><b>Criterion 27: Compliance with transparency requirements</b></p> <p><i>Similar</i></p> <p>Originator to be responsible for compliance with Article 7 SR.</p> <p>Asset level data before pricing upon request by potential investors.</p> <p>Transaction documents, prospectus or transaction summary and STS notification drafts before pricing.</p> <p>Final documents within 15 days after closing.</p>	<p>Originator and sponsor to be responsible for compliance with Article 7 SR.</p> <p>Asset level data before pricing upon request by potential investors.</p> <p>Transaction documents, prospectus or transaction summary and STS notification drafts before pricing.</p> <p>Final documents within 15 days after closing.<sup>53</sup></p>
<p><i>Criteria specific to synthetic securitisation</i></p>	
<p><b>Criterion 28: Credit events</b></p> <p>Credit protection agreement should cover at least the following credit events:</p> <ul style="list-style-type: none"> <li>• failure to pay of underlying obligor (Article 178(1)(b) of the CRR);</li> <li>• bankruptcy of underlying obligor (Article 178(3) (e) and (f) of the CRR);</li> </ul> <p>Credit events to be clearly documented.</p> <p>Certain forbearance measures applied to underlying exposures must not preclude the trigger of eligible credit events.</p>	<p>N/A</p>

51 SR Article 22(3).

52 SR Article 22(4).

53 SR Article 22(5).



Proposed criteria for synthetic securitisations	Non-ABCP traditional securitisations
<p><b>Criterion 29: Credit protection payments</b></p> <p>Credit protection payment following a credit event to be calculated based on actual realised loss suffered by originator or the relevant lender.</p> <p>Final credit protection payment should be payable within specified period following the end of the workout process for the relevant underlying exposure if the end of the workout process occurs before the scheduled legal maturity or early termination of the credit protection agreement.</p> <p>Transactions to provide that an interim credit protection payment is to be made at latest within 6 months after credit event occurs in cases in which the workout of losses for underlying exposure has not been finalised by that time.</p> <p>Interim credit protection payment to be, at least, the higher of the impairment considered by the originator in its financial statements, at time interim payment is made or, if applicable, the LGD determined under Part Three Title II.</p> <p>Chapter 3 of the CRR that has to be applied to corresponding underlying exposures in order to determine the IRB capital requirements on the originator for such underlying exposures. If an interim credit protection payment made, a final credit protection payment should be made in order to adjust the interim settlement of losses to actual realised loss, in accordance with the first paragraph of this criterion.</p> <p>If the protected amount is less than the outstanding notional amount of the corresponding underlying exposure, the credit protection payment should be in same proportion to protected amount as the protection buyer's realised loss bears the outstanding notional amount of the underlying exposure, subject only to the rule on interim payments.</p> <p>Enforceable rights of protection buyer to receive protection payments.</p> <p>Amounts payable by investors to be clearly defined, capable of calculation and limited in amount.</p> <p>Circumstances in which investors are required to make payments under credit protection agreement should be clearly and objectively defined or subject to a determination by the verification agent, and limited in number.</p> <p>Credit protection amount to be broken down to the level of individual underlying exposures.</p>	

Proposed criteria for synthetic securitisations	Non-ABCP traditional securitisations
<p><b>Criterion 30: Credit protection payments following the close out/final settlement at the final legal maturity of the credit protection agreement</b></p> <p>Following a credit event and if the workout process has been not completed upon the scheduled legal maturity or early termination of the credit protection agreement, the credit protection agreement should clearly specify the maximum extension period that should apply to the workout process for those exposures, which should not be longer than 2 years.</p> <p>A final credit protection payment within this extension period should be made on the basis of the final estimated loss expected to be suffered by the originator and recorded by the originator in its financial statements at that time.</p> <p>After termination of the credit protection by investors, workout process should continue in respect of any outstanding credit events that occurred prior to the termination in the same way as described in the first paragraph.</p>	N/A
<p><b>Criterion 31: Credit protection premiums</b></p> <p>The credit protection premiums paid under the credit protection agreement establishing the synthetic securitisation should be structured as contingent premiums: no guaranteed premiums, upfront premium payments, rebate mechanisms or other mechanisms that may avoid or reduce the actual allocation of losses to the investors or return part of the paid premiums to the originator after the maturity of the transaction should be stipulated in the credit protection agreement.</p> <p>Documentation should clearly describe how the protection fee and any note coupons are calculated in respect of each payment date over the life of the securitisation.</p> <p>The rights of the protection seller to receive credit protection premiums under synthetic securitisation should be enforceable.</p>	N/A

Proposed criteria for synthetic securitisations	Non-ABCP traditional securitisations
<p><b>Criterion 32: Verification agent</b></p> <p>Third party verification agent to be appointed by originator at outset of transaction, to verify, for each of the underlying exposures in relation to which a credit event notice was given:</p> <ul style="list-style-type: none"> <li>• that the credit event occurred in accordance with the credit protection agreement;</li> <li>• that the underlying exposure was included in the securitised portfolio at the time of the relevant credit event;</li> <li>• that the underlying exposure met the eligibility criteria, at the time of inclusion in the reference portfolio;</li> <li>• that, if an underlying exposure has been added as result of a replenishment, such replenishment complied with the replenishment conditions;</li> <li>• that the final loss amount is in line with the losses registered in the profit and loss statement by the originator;</li> <li>• that, at the time when the final protection payment is made, the allocation of losses to investors in relation to the underlying exposures has been conducted correctly.</li> </ul> <p>The verification agent should be independent of the originator, investor and any SSPE and should have been appointed, and its appointment accepted, on or before the closing date.</p> <p>Verification may be performed on a sample basis but investor must have the right that a particular exposure is subject to verification.</p> <p>Originator to undertake to provide all information necessary to verify the requirements to the verification agent.</p>	<p>N/A</p>

Proposed criteria for synthetic securitisations	Non-ABCP traditional securitisations
<p><b>Criterion 33: Early termination events</b></p> <p>Other than as a result of insolvency of the protection provider, a failure to pay (in respect of any premium or other amounts payable by the originator to investors) or breach of a material contractual obligation by the protection provider, the originator is permitted to terminate a transaction prior to its scheduled maturity only when any of the following occurs:</p> <ul style="list-style-type: none"> <li>• relevant regulatory events which should: <ul style="list-style-type: none"> <li>– include relevant changes in any law and/or regulation or the tax or accounting treatment of a transaction that have a material adverse effect on the amount of capital the protection buyer is required to hold in connection with the securitisation or the underlying exposures;</li> <li>– include a determination by a competent authority that the protection buyer (or any affiliate of the protection buyer) is not or is no longer permitted to recognise significant risk transfer in respect of the securitisation, in accordance with Article 245 of the CRR;</li> <li>– exclude other factors affecting the economic efficiency of the transaction that are not enshrined in law or regulation, such as credit rating agencies’ methodologies and a central bank’s collateral framework;</li> </ul> </li> <li>• a time call is exercised, where the time period measured from the securitisation’s closing date is equal to or higher than the weighted average life of the initial reference portfolio at closing. The time call should not be structured to avoid allocating losses to credit enhancement positions or other positions held by investors and should not be otherwise structured to provide credit enhancement;</li> <li>• a call as per Article 245(4)(f) of the amended CRR is exercised (clean-up call).</li> </ul> <p>Such call rights should be clearly specified. No other originator calls should be allowed.</p>	<p>N/A</p>

Proposed criteria for synthetic securitisations	Non-ABCP traditional securitisations
<p><b>Criterion 34: Synthetic excess spread (“SES”)</b></p> <p>The originator (protection buyer) can commit to the SES, which is available as credit enhancement for the investors under the following conditions:</p> <ul style="list-style-type: none"> <li>• The amount of the SES that the originator commits to using as credit enhancement at each payment period is predetermined in the contract and expressed as a fixed percentage of the total outstanding portfolio balance (fixed SES).</li> <li>• The SES may be used to cover credit losses that materialise during each payment period. The SES that is not used for that purpose during the payment period is returned to the originator (use-it-or-lose-it mechanism).</li> <li>• The total committed amount every year may never be higher than the one-year regulatory expected loss on the underlying portfolio (in order to ensure that originators do not commit amounts of excess spread that are excessive/ can hardly be generated by the portfolio).</li> </ul> <p>If SES included in a transaction, these conditions to be clearly specified in the documentation.</p>	N/A
<p><b>Criterion 35: Eligible credit protection agreement, counterparties and collateral</b></p> <p>Only the following credit protection arrangements should be allowed:</p> <p>A. a guarantee meeting the requirements set out in Chapter 4 of Part Three, Title II of the CRR, by which the credit risk is transferred to any of the entities listed under Article 214 (2) (a)-(d) of the CRR, provided that the exposures to the protection provider qualify for a 0% risk weight under Chapter 2 of Part Three, Title II of the CRR;</p> <p>B. a guarantee meeting the requirements set out in Chapter 4 of Part Three, Title II of the CRR which benefits from a counter-guarantee of any of the entities referred to in point (A); or</p>	N/A

Proposed criteria for synthetic securitisations	Non-ABCP traditional securitisations
<p>C. other credit protection in the form of guarantees, credit derivatives or credit linked notes not referred to under the previous two points that meets the requirements set out in Sub-Section 2 of Section 3, Chapter 4 of Part Three, Title II of the CRR as amended by Article 249 of the CRR, provided that the obligations of the protection seller are subject to the following collateral requirements.</p> <p>When the collateral is provided in accordance with point C, both the originator and the protection seller need to have recourse to high quality collateral, in either of the following forms:</p> <ul style="list-style-type: none"> <li>• collateral is in the form of 0% risk-weighted debt securities, that have a short remaining maturity of maximum three months, matching the payment dates, which are redeemed into cash in an amount equal to the outstanding balance of the protected tranche and which are held by a custodian independent of the protection buyer and the protection seller; or</li> <li>• collateral in the form of cash held with a third-party credit institution or in the form of cash on deposit with the protection buyer, subject to a minimum credit quality standing requirement, meaning that, if the third-party credit institution or the protection buyer ceases to satisfy that minimum credit quality standing, it is required either to transfer the collateral to a third-party bank that does have the minimum credit quality standing or to invest the cash collateral in high-quality securities held by a custodian or the protection buyer. The requirements set out in this paragraph would be deemed to be satisfied in the case of the investments of the collateral coming from credit linked notes issued by the originator, in accordance with Article 218 of the CRR.</li> </ul> <p>In addition, the following requirements should apply to the collateral:</p> <ul style="list-style-type: none"> <li>• The right of the protection buyer to use the collateral to meet protection payment obligations of the protection seller should be enforceable. Security arrangements should be provided to ensure this right of the protection buyer.</li> </ul>	

Proposed criteria for synthetic securitisations	Non-ABCP traditional securitisations
<ul style="list-style-type: none"> <li>• The right of the investors, when the synthetic securitisation is unwound or as the tranches amortise, to return any collateral that has not been used to meet protection payments should be enforceable.</li> <li>• if collateral is invested in securities, the securitisation documentation should set out the eligibility criteria and custody arrangement for such securities.</li> </ul> <p>Where the investors remain exposed to the credit risk of the originator, this must be clearly disclosed.</p> <p>The originator should obtain an opinion from a qualified legal counsel confirming the enforceability of the credit protection in all relevant jurisdictions.</p>	

## Contacts



**Merryn Craske**

Partner, London  
 E: mcraske@mayerbrown.com  
 T: +44 20 3130 3029



**Ed Parker**

Partner, London  
 E: eparker@mayerbrown.com  
 T: +44 20 3130 3922



**Chris Arnold**

Partner, London  
 E: carnold@mayerbrown.com  
 T: +44 20 3130 3610



**Nanak Keswani**

Counsel, London  
 E: nkeswani@mayerbrown.com  
 T: +44 20 3130 3710



**Robyn Llewellyn**

Senior Associate, London  
 E: rllewellyn@mayerbrown.com  
 T: +44 20 3130 3990



**Harjeet Lall**

Associate, London  
 E: hlall@mayerbrown.com  
 T: +44 20 3130 3272

---

Mayer Brown is a distinctively global law firm, uniquely positioned to advise the world's leading companies and financial institutions on their most complex deals and disputes. With extensive reach across four continents, we are the only integrated law firm in the world with approximately 200 lawyers in each of the world's three largest financial centers—New York, London and Hong Kong—the backbone of the global economy. We have deep experience in high-stakes litigation and complex transactions across industry sectors, including our signature strength, the global financial services industry. Our diverse teams of lawyers are recognized by our clients as strategic partners with deep commercial instincts and a commitment to creatively anticipating their needs and delivering excellence in everything we do. Our “one-firm” culture—seamless and integrated across all practices and regions—ensures that our clients receive the best of our knowledge and experience.

Please visit [mayerbrown.com](https://www.mayerbrown.com) for comprehensive contact information for all Mayer Brown offices.

This Mayer Brown publication provides information and comments on legal issues and developments of interest to our clients and friends. The foregoing is not a comprehensive treatment of the subject matter covered and is not intended to provide legal advice. Readers should seek legal advice before taking any action with respect to the matters discussed herein.

Mayer Brown is a global services provider comprising associated legal practices that are separate entities, including Mayer Brown LLP (Illinois, USA), Mayer Brown International LLP (England), Mayer Brown (a Hong Kong partnership) and Tauil & Chequer Advogados (a Brazilian law partnership) (collectively the “Mayer Brown Practices”) and non-legal service providers, which provide consultancy services (the “Mayer Brown Consultancies”). The Mayer Brown Practices and Mayer Brown Consultancies are established in various jurisdictions and may be a legal person or a partnership. Details of the individual Mayer Brown Practices and Mayer Brown Consultancies can be found in the Legal Notices section of our website. “Mayer Brown” and the Mayer Brown logo are the trademarks of Mayer Brown.

© 2020 Mayer Brown. All rights reserved.

Attorney Advertising. Prior results do not guarantee a similar outcome.