SFC response to the European Commission's targeted consultation on the functioning of the EU securitisation framework

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Introduction

The Swiss Finance Council (SFC) engages in dialogue around policy developments in finance at a European level. Our members include global wealth and asset management firms with substantial activities in the European Union (EU), contributing to a diverse market and choice for European retail investors.

General remarks

The slow recovery in the EU securitisation market post-crisis has resulted in banks being constrained in managing their balance sheets, limiting their financing capacity. At the same time, investors have been left with a reduced choice of EU financial instruments to invest in, hampering the development of EU capital markets. An appropriately scaled, regulated and supervised EU securitisation market could therefore act as an effective funding and risk transfer tool for banks and contribute directly and indirectly to the financing of the economy.

Furthermore, the turmoil in the banking sector in March 2023 highlighted the need for more diversified sources of funding. In this respect, securitisation could help further strengthen banks' liquidity management.

Against this backdrop, we fully support the European Commission's intention to improve the functioning of the EU securitisation framework. To unlock the potential of securitisation as a powerful financing tool, it is critical to adjust the overly conservative prudential treatment of securitisations, in particular by reducing the so-called (p) factor and risk-weight floors (in terms of capital adequacy) and by increasing eligibility of high-quality senior tranches in the Liquidity Coverage Ratio (LCR). In this regard, supervisory practices in the UK and US could serve as a model. Additionally, streamlining of disclosure and due diligence requirements will reduce operational costs for market participants, promoting the development of a larger scale sustainable securitization market.

We also note that over-ambitious objectives, which risk slowing down or even bringing the political process to a standstill, should be carefully weighed as current economic conditions underline the need to expedite a targeted adjustment of the regulatory framework.

1. Effectiveness of the securitisation framework

1.1. Do you agree that the securitisation framework (including the Securitisation Regulation and relevant applicable provisions of the CRR, Solvency II and LCR) has been successful in, or has contributed to, achieving the following objectives:

	Fully agree	Somewhat agree	Neutral	Somewhat disagree	Fully disagree	No opinion
1. Revival of a safer securitisation market					X	
2. Improving financing of the EU economy by creating a more balanced and stable funding structure of the EU economy				X		
3. Weakening the link between banks' deleveraging needs and credit tightening				X		
4. Reducing investor stigma towards EU securitisations		X				
5. Removing regulatory disadvantages for simple and transparent securitisation products				X		
6. Reducing/eliminating unduly high operational costs for issuers and investors					X	
7. Differentiating simple, transparent and standardised (STS) securitisation products from more opaque and complex ones		X				
7.1. Increasing the price difference between STS vs non-STS products			X			
7.2. Increasing the growth in issuance of STS vs non- STS products					X	
8. Supporting the standardisation of processes and practices in securitisation markets		X				

8.1. Increasing the degree of standardisation of marketing and reporting material		X				
8.2. Reducing operational costs linked to standardised securitisation products					X	
9. Tackling regulatory inconsistencies				X		

2. Impact on SMEs

2.1. Have you come across any impediments to securitise SME loans or to invest in SME loan securitisations?

- **Yes**
- No
- No opinion

Please explain.

A general adjustment and streamlining of the regulatory framework (including prudential treatment, due diligence requirements, and disclosure) would benefit all types of securitisations, regardless of the originator of the underlying assets.

2.2. How can securitisation support access to finance for SMEs?

Securitisation can support the financing of small and medium-sized enterprises (SMEs) both directly and indirectly by more efficiently allocating capital to companies and investors:

Additional capital inflow for companies: Securitisation offers SMEs the opportunity to convert their receivables (e.g., future income from leases or trade receivables) into tradable securities via a sponsor and sell them to investors.

Strengthened banks' lending capacities: By pooling illiquid loans and transferring risk away from banks, securitisation can free up balance sheet capacity and enable banks to provide more lending to the economy.

3. Scope of application of the Securitisation Regulation

3.1. In your opinion, should the current jurisdictional scope of application of the SECR be set out more clearly in the legislation?

- Yes
- **No**
- No opinion

Please explain.

We do not see added value in further clarifying the jurisdictional scope of application of the SECR as there is no non-EU STS securitisation. However, the strict interpretation of the EU disclosure provisions to securitisation, including the ones entirely issued in third countries, constitutes an obstacle for EU investors. Easing / simplifying the relevant EU disclosure provisions, especially if the relevant third country jurisdiction applies disclosure provisions similar to the ones of the EU would be a first step to reduce some administrative burden and widen EU investor choice. Reporting should either comply with local regulatory requirements in the relevant jurisdiction or utilize a simplified, tailored template to better address the specific needs of these transactions.

3.6. Should the definition of a sponsor be expanded to include alternative investment firm managers established in the EU?

- Yes
- **No**
- No opinion

Please explain, including if the definition should be expanded to any other market participants.

The definition of sponsor in Art. 2(5) SECR should not be amended to include AIFMs established in the EU. This may result in increased capital requirements for AIFMs (as well as other obligations such as risk retention, transparency and risk management obligations) that would then affect AIFMs' core fund management business which would be an unwelcome outcome given that we view acting as a sponsor as being more appropriate for banks and investment firms. These firms' significant balance sheets give investors confidence when investing in securitisations that they sponsor which is difficult to replicate for AIFMs (given that the whole AIFMD regime is focused on agency fund management business). Accordingly, we do not think that amending the definition of sponsor to include AIFMs established in the EU would result in significantly increased activity in the securitisation market.

4. Due diligence requirements

4.3. Please select your preferred option to ensure that investors are aware of what they are buying and appropriately assess the risks of their investments.

- **Option 1: The requirements should be made more principles-based, proportionate, and less complex**
- Option 2: The requirements should be made more detailed and prescriptive for legal certainty
- Option 3: There is no need to change the text of the due diligence requirements
- No opinion

Please explain.

Granularity of due diligence should appropriately reflect the type of investor and the type of securitisation to invest in. Removing the current and overly complex one-size-fits-all approach would reduce unnecessary compliance costs and thus broaden the investor and issuer base. In this respect, the EU could consider following the approach recently adopted by the UK, which as of November 2024 amended the due diligence requirements moving away from standardised reporting templates and instead requiring comprehensive information flows for independent risk assessment.

5. Transparency requirements and definition of public securitisation

5.4. Is the information that investors need to carry out their due diligence under Article 5 different from the information that supervisors need?

- **Significantly different**
- Moderately different
- Similar

Please explain.

In general, investors tend to need more customized, transaction-specific information that meets their risk assessment needs, such as eligibility criteria, concentration limits, etc, whereas the ESMA templates appear to provide either uniform and standardized or often overly detailed granular data (loan-level reporting).

5.5. To ensure that investors and supervisors have sufficient access to information under Article 7, please select your preferred option below.

Option 1:

- Streamline the current disclosure templates for public securitisations
- Introduce a simplified template for private securitisations and require private securitisations to report to securitisation repositories (this reporting will not be public).

Option 2:

- Remove the distinction between public and private securitisations.
- Introduce principles-based disclosure for investors without a prescribed template.
- Replace the current disclosure templates with a simplified prescribed template that fits the needs of competent authorities with a reduced scope/reduced number of fields than the current templates.

Option 3:

- No change to the existing regime under Article 7

Please explain.

In our view, Option 2 is the preferred among the proposed ones as establishing a principle-based approach would ensure that the information provided in the disclosures are adequately reflecting investors' needs, would tackle current undue operational burden and costs especially for CLO and CMBS securitisations. In addition, establishing a principle-based approach could help to solve the current issues related to ESMA templates being applied also to non-EU transactions while still ensuring adequate risk assessment.

5.16. Under Option 2, what should be included in the principle-based disclosure requirements for investors to reduce compliance costs while ensuring access to information? How should investors access this information?

Please explain your answer, listing all relevant information that you think investors need to do proper due diligence that could be common across all securitisations.

By applying a principles-based approach, an exhaustive prescriptive list of required information to be included in the pre-contractual and periodic disclosures would not be needed. There is**,** however, key information which is relevant for investors and it would be helpful to specify key information by category that issuers should provide relevant information on. This will differ by transaction type and the issuer ought to be able to exercise judgement to include the relevant information. For example, for ABCP we would like to see Private Placement Memorandums/Prospectuses made more uniform. It is essential that they address structure, credit enhancement, outs to funding, credit policy, risk retention, the waterfall structure, key parties to the transaction including administrator, liquidity facilities, the periodic (usually monthly) should include comprehensive description of the assets pool incl. currency and where the assets are based, over collateralization and real loss rates. For traditional securitisations such as CMBS, CLOs and ABS, the following are also required: loan by loan data, geographic breakdown as to location of assets, FICO scores, loan loss data and delinquency rates. In the amended legal text, reference should made to information related to key areas, but without prescriptiveness.

5.19. Should the text of Article 7 of the SECR explicitly provide flexibility for reporting on the underlying assets at aggregated level?

- **Yes**
- No
- No opinion

5.20. If you answered yes to question 5.19., which categories of transactions should be allowed to provide reporting only at aggregated level? You may select more than one option.

- Granular portfolios of credit card receivables
- Granular portfolios of trade receivables
- **Other**

If you chose "other", please explain.

We are of the view that some flexibility should be granted depending on the type of securitisation. For ABCP transactions information could be provided at aggregate pool level, while for other types of ABS, like CLOs, CMBS etc., individual loan level data is needed for the investment analysis.

8. Securitisation platform

8.1. Would the establishment of a pan-European securitisation platform be useful to increase the use and attractiveness of securitisation in the EU?

- **Yes**
- No
- No opinion

8.2. If you answered yes to question 8.1., which of the following objectives should be main objective(s) of the platform? You may select more than one option

- Create an EU safe asset
- **Foster standardisation (in the underlying assets and in securitisation structures, including contractual standardisation)**
- Enhance transparency and due diligence processes in the securitisation market
- Promote better integration of cross-border securitisation transactions by offering standardised legal frameworks
- **Lower funding costs for the real economy**
- **Lower issuance costs**
- Support the funding of strategic objectives (e.g. twin transition, defence, etc.)
- Other

8.8. What do you view as the main challenges associated with the introduction of such a platform in the EU, and how could these be managed?

A pan-European securitisation platform may well have its merits with a view to deeper and more standardised markets. Corresponding exploratory work should in a first phase aim at strengthening market forces and take appropriate account of the financing and issuing capacities of third-country investors and issuers. However, platform considerations should not lead to an unnecessary slowdown or even halt of the political process. Economic realities underline the need to expedite changes to the regulatory conditions for securitisations (e.g., prudential treatment, due diligence, and reporting).

9. Prudential and liquidity risk treatment of securitisation for banks

9.1. What concrete prudential provisions in the CRR have the strongest influence on the banks' issuance of and demand for those types of traditional, i.e. true sale, securitisation which involve the senior tranche being sold to external investors and not retained by the originator?

1) Risk-weight floors: Current risk-weight floors do not adequately reflect the protected position of senior tranches and thus overstate actual risk. Risk-weight floors for senior tranches should therefore be lowered (for originators and sponsor banks), e.g., from 10% to 7% for STS securitisation and from 15% to 10% for non-STS securitisations, as proposed by EBA.

2) (p) factor: The (p) factor in both the SEC-SA (Standardised Approach) and SEC-IRBA (Internal Ratings-Based Approach) formulas imposes additional capital requirements on securitised assets. The corresponding mitigation measure in CRR3 - a halved (p) factor to reduce the impact on the output floor - is temporary in nature (until 2032) and lead to a reduction in RWAs only under certain conditions. We therefore recommend a general and permanent reduction of the (p) factor beyond the existing mitigation measures regarding the output floor.

3) Liquidity Coverage Ratio (LCR): The LCR framework for senior tranches of securitisation is overly conservative, especially if compared to other similar assets. This restrictive treatment negatively impacts securitisations' attractiveness. We therefore recommend upgrading HQLA eligibility of senior STS and non-STS tranches with AAA to AA- ratings in line with their risk profile: the former should be classified as Level 2B and the latter as Level 2A.

As regards further technical details, we refer to the submission of the European Banking Federation (EBF).

Regulatory consistency: To enhance global regulatory consistency, we recommend that the relevant EU institutions also seek to implement these adjustments to the global capital adequacy and liquidity standards at the BCBS level.

12. Additional questions

12.3. Please specify which regulatory and non-regulatory measures have the strongest potential to stimulate the issuance of placed traditional securitisation.

To unlock the potential of securitisation as a powerful risk transfer and financing tool, it is of utmost importance to adjust the overly conservative prudential treatment of securitisations, in particular by reducing the (p) factor and risk-weight floors for originators and sponsor banks and by improving LCR-eligibility of senior tranches. The streamlining of disclosure and due diligence requirements will reduce operational costs for market participants and thus further promote the development of a sustainable securitization market on a largescale.

12.9. Are there any other relevant issues (outside of those addressed in the specific sections of the consultation paper above) that affect securitisation issuance and investments that you consider should be addressed?

- **Yes**
- No
- No opinion

12.10. If you answered yes to question 12.9., please explain your answer.

In this section, we would like to elaborate on our reasoning regarding question 5.5, as the technical design of the consultation only allows the selection of predefined answers without the possibility of written comments. In our view, Option 2 is the preferred among the proposed ones as establishing a principle-based approach would ensure that the information provided in the disclosures are adequately reflecting investors' needs, would tackle current undue operational burden and costs especially for CLO and CMBS securitisations. In addition, establishing a principle-based approach could help to solve the current issues related to ESMA templates being applied also to non-EU transactions while still ensuring adequate risk assessment.