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Finance for Europe

Appendix 2

STS Criterion for Term ABS	Equivalent STS Criterion for ABCP	Comment for both Term ABS and ABCP (unless otherwise specified)
Art. 8(1): true sale / no clawback /minimum perfection triggers	Art. 12 (1) applies this to each ABCP transaction Art. 13 (1) applies this to all transactions within a ABCP Programme	Require compliance
Art. 8(2): representations and warranties that exposures are not encumbered, etc.	Art. 12 (1) applies this to each ABCP transaction Art. 13 (1) applies this to all transactions within a ABCP Programme	We suggest exempting existing transactions. These are not market standard representations and warranties currently, and few if any existing transactions would comply. Further it would be very difficult to comply retrospectively with these representations and warranties and the credit quality of the portfolio is likely to have been already established by the credit history of the securitised portfolio in any case.
Art. 8(3): no discretionary active portfolio management	Art. 12 (1) applies this to each ABCP transaction	Require compliance. Where documentation allows active management of the portfolio,

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	Art. 13 (1) applies this to all transactions within a ABCP Programme	existing transactions should nevertheless be allowed to comply provided the originator, sponsor and/or issuer undertake that no further active management will be undertaken and disclose this in their STS notification.
Art. 8(4): pool should be homogenous	Replaced for ABCP by Art. 12(2).	Require compliance for both Term ABS and ABCP. For ABCP we ask to make this criterion identical to Art. 8(4) but adding a maturity limit of 4 years (WAL) and 7 years (residual maturity), and excluding real estate assets.
Art. 8(5): underlying exposures should not include securitisations	Art. 12 (1) applies this to each ABCP transaction Art. 13 (1) applies this to all transactions within a ABCP Programme	Require compliance.
Art. 8(6): underlying exposures to be originated in ordinary course of business.	Replaced for ABCP by Art. 12(5).	Require compliance, provided that material changes to underwriting standards need only be disclosed on a prospective basis from the date of the STS notification.

STS Criterion for Term ABS	Equivalent STS Criterion for ABCP	Comment for both Term ABS and ABCP (unless otherwise specified)
Art. 8(7): underlying exposures are not in default.	Art. 12 (1) applies this to each ABCP transaction Art. 13 (1) applies this to all transactions within a ABCP Programme	Exempt existing transactions. The relevance of this criterion drops off very quickly following issuance, as investors are likely to use the credit history of the securitisation/securitised portfolio to make investment decisions following issuance, not initial transaction data which becomes of historic interest only very quickly. Inevitably, an existing transaction will, over time, gather exposures in default and some obligors will become credit-impaired over the life of the transaction. While this type of distinction may be useful for a new portfolio on the date of issue, its relevance is very limited for existing transactions that have been outstanding for more than a few months.
Art. 8(8): debtors have made at least one payment	Art. 12 (1) applies this to each ABCP transaction Art. 13 (1) applies this to all transactions within a ABCP Programme	Exempt existing transactions. The requirement to have made at least one payment is primarily an anti-fraud measure. Once a single payment has been made (even if this happens after the

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		transfer of the exposure to the portfolio) the function of the criterion has been fulfilled.
Art. 8(9): repayment should not depend on sale or refinancing of the secured assets	Art. 12 (1) applies this to each ABCP transaction Art. 13 (1) applies this to all transactions within a ABCP Programme	Require compliance.
Art 9(1): requirement to satisfy risk retention requirement in Article 4	Art. 12 (1) applies this to each ABCP transaction Art. 13 (2) applies this to all transactions within a ABCP Programme	Exempt existing transactions, subject to them complying with the existing risk retention requirements to which they are already subject.
Art. 9(2): mitigate and disclose interest rate and currency risks.	Art. 12 (1) applies this to each ABCP transaction Art. 13 (6) applies this to all transactions within a ABCP Programme	Require compliance, provided that the disclosure of interest rate and currency risk mitigation measures may be made (or completed) in the STS notification.
Art. 9(3): interest payments to be based on generally used market rates	Art. 12 (3) applies this to each ABCP transaction Art. 13 (1) applies this to all transactions within a ABCP Programme	Require compliance.

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Art. 9(4): sequential pay post-default Art.9(5): early amortisation Art. 9(6): servicer continuity Art. 9(7): default trigger definitions Art. 9(8): conflicts resolution between classes of investors	Art. 12(4): sequential pay post-default Art. 12(6): early amortisation Art. 12(7): servicer continuity Art 12(1) applies Art. 9(7) to ABCP Art 12(1) disapplies Art. 9(8) for ABCP Art. 13 (7) applies to all transactions within a ABCP Programme	These provisions are difficult cases. They all fall into the category of structural/documentation features for which there is a sensible case to be made and we are generally supportive of their inclusion in the STS framework. They are nonetheless all provisions that legacy transactions are likely to struggle to comply with for technical reasons. We submit that they all represent cases where the benefit to the market of exempting existing transactions from complying outweighs the additional risk that would be permitted as a result. This is especially true in respect of Arts. 9(6) and 9(7) because the very fact that the transaction will have been running for some time will have clarified these issues. For these reasons we suggest exempting existing transactions, but acknowledge that this is a policy judgment.

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Art. 10(1): access to historic default and loss data	Art. 12 (1) applies this to each ABCP transaction Art. 13 (1) applies this to all transactions within a ABCP Programme	Exempt existing transactions on the basis that they will already have a credit history and subject to the transaction complying with a principles-based set of disclosure requirements modelled on Art. 409 of the CRR.
Art. 10(2): sample pool audit	Art. 12 (1) applies this to each ABCP transaction Art. 13 (1) applies this to all transactions within a ABCP Programme	Exempt existing transactions on the basis that this is a requirement relating to the initial offering document for the transaction which cannot sensibly be retrospectively complied with. Pool audits are of no value in ABCP transactions and are consequently not currently market practice, so we ask that Art. 10(2) be disapplied for ABCP transactions.
Art 10(3): provide liability cash flow model to investors	Art. 12(1) disapplies Art. 10(3) for ABCP	Require compliance, provided that the liability cash flow model need only be provided on a prospective basis from the date of the STS notification.

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N/A	Art. 13(1): all transations within an ABCP programme should comply with Art. 12.	We ask to relax this criterion.
N/A	Art. 13(4): sponsor must be a CRR credit institution and provide full support liquidity.	Require compliance.
N/A	Art 13(5): exclusion of call options and extension clauses.	We ask to omit this requirement. If criterion is retained Where programme documentation allows such features, existing transactions should nevertheless be allowed to comply provided the originator, sponsor and/or issuer undertake that they will not be used and disclose this in their STS notification.

We would be pleased to discuss any of these comments in further detail, or to provide any other assistance that would help facilitate your review and analysis.