The Commission proposal for Simple, Transparent and Standardised (STS) Securitisations is a step in the right direction

Executive summary
AmCham EU is strongly supportive of EU and other international efforts to revive securitisation and therefore welcomes the Commission's proposal for Simple, Transparent and Standardised (STS) securitisations. A harmonisation of previously scattered requirements together with the adoption of a single STS definition will bring much needed clarity and create a common language that will help stimulate market interest around securitisation. Key to the success of the initiative will be to ensure that the regulation creates the right incentives for both issuers and investors, adopts an open approach to third countries, and establishes a level playing field between securitisations and other fixed income products. AmCham EU believes it will be essential to avoid regulatory fragmentation, ensure a practical, reliable and fast compliance process, and rapidly provide legal certainty on the capital treatment of STS under Solvency 2.

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AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €2 trillion in 2015, directly supports more than 4.3 million jobs in Europe, and generates billions of euros in income, trade and R&D expenditures annually.

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POSITION PAPER

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Introduction

The American Chamber of Commerce to the European Union (AmCham EU) strongly supports EU and other international efforts to revive securitisation. This is a particularly important priority for Europe where the securitisation market has been virtually shut to private investors since 2007, despite the fact that EU securitisations performed strongly since and throughout the crisis. **Time is of the essence.**

The Commission proposal for Simple, Transparent and Standardised (STS) securitisations is a welcomed and significant step forward in restarting securitisation in Europe. In particular, **harmonising requirements that previously varied** by sector and were inconsistent (e.g. risk retention, investor due diligence and disclosure) and adopting a single STS definition, will bring much needed clarity and create a common language that is core to rallying market interest around securitisation.

Another key to the success of that initiative will be to ensure that the Regulation creates **the right incentives** for both issuers and investors, including non-bank investors, to return to European securitisations. We set out below some areas that we believe require particular consideration.

1. Open Europe

With a global securitisation framework not yet completed, and in the absence of other jurisdictions looking to adopt a similar framework, an open third country regime will be more conducive to creating global momentum to invest in EU securitisations. As such, we **strongly support the Commission's initial approach:** non-EU securitisations should be allowed to get STS recognition; and underlying exposures should not be required to be located in the EU.

We are **very concerned by the U-turn change introduced by Council**, requiring that for a third country securitisation to be deemed STS compliant, all of the originator, sponsor and Special Purpose Entity need a legal seat in Europe. Requiring everything to be based in the EU sets a worrying precedent for third country regimes - especially in the absence of an equivalence mechanism (only a review to look at the potential of an equivalence regime pending progress in international discussions).

Secluding EU markets for entities in third countries appears highly inconsistent with the Capital Markets Union (CMU) objective to promote inward investments.

2. Create a level playing field between securitisation versus other fixed income products

The Commission proposal does not go far enough to level the playing field between securitisation and other comparable funding and investment instruments, such as covered bonds. Examples are:

- The **capital treatment**, which still does not incentivise enough banks to hold STS securitisations, or institutional investors to choose securitisations over other fixed income instruments (e.g. covered bonds) of similar credit (see paragraph 8 below specifically for insurers)

- The **due diligence and disclosure requirements** for investors, which are more onerous than any other due diligence requirements including for sectors with much higher risk than STS securitisation. In our view, due diligence requirements for STS and non-STS securitisation should be differentiated to reflect the different nature of the two securitisation categories.

- A more level playing field under **liquidity regulation** will also be critical going forward.

We believe that the new EU framework should introduce comparable requirements for comparable risks across all comparable funding and investment instruments.

3. Avoid regulatory fragmentation in criteria interpretation

While the Regulation introduces a single STS definition, there are more than 50 criteria attached, several of which vague and subject to regulatory interpretation. This could lead to regulatory fragmentation and defeat the central concept of the STS proposal.

Issuers are unlikely to be willing to take responsibility under the proposed self-attestation regime if left to ex-post regulatory interpretations of STS criteria which they cannot predict.

There is therefore a need for a single point of interpretation for regulators and market participants, perhaps via the Joint Committee of the European Supervisory Authorities (ESAs), so long as it is continuous and capable of swift determinations.

4. Ensure a practical, reliable and fast compliance process

The Commission's concern about creating another over-reliance problem if compliance is left to a third party seems ill-founded, as the process involved is verification of factual elements and not credit analysis.

Overwhelmingly, investors have said they would be more incentivised to return to securitisation if an independent, credible body issues certifications, for the following reasons: it would bring significant cost benefits, few and only the largest institutional investors would have the resources to check compliance, and there could be significant pricing risks if investors reach different conclusions on whether a securitisation is in fact STS or not.

This would also help reduce the regulatory fragmentation risk mentioned above.

We therefore **welcome the Council's clarification that authorised third parties can indeed be used** to assess eligibility with the STS criteria.

5. Design a more open approach to short-term securitisations/asset backed commercial paper (ABCP) conduits

Maturity restrictions as proposed by the Commission would close this type of financing to certain assets currently funded through ABCP, e.g. auto loans and longer dated SME loans.

In addition, disclosure requirements are so detailed and cumbersome that they would likely act as a disincentive given ABCP deals are mainly private.

A number of helpful improvements have been made by the Council, in particular for pools of auto loans, auto leases, and equipment lease transactions where the weighted average life is expanded to three years and the maximum maturity to six years.

6. Incentivise banks to use risk-sensitive approach to capital calculations for STS securitisation

We support a sensible approach to use of external ratings based approach in the CRR hierarchy of methods. Banks should be allowed and stimulated to use risk-sensitive approaches to their capital calculations, including for STS securitisation.

7. Keep the door open for synthetic securitisation

We concur with the views that more work needs to be done to calibrate specific requirements for synthetic securitisations. Therefore, we support the Council's approach to revisit the potential eligibility of synthetics in the STS framework one year after entry into force of the Regulation - which will allow for a more informed debate on this matter.

8. Provide legal certainty on the capital treatment of STS under Solvency 2 (S2)

The insurance sector is potentially one of the biggest investors in STS. However, the S2 capital charges at their current level are a disincentive for institutional investors to buy these assets, and still well above US levels. For example, the capital charge for a 5-year, Type 1, AA-rated securitisation is 37.5 times higher under S2 than the equivalent charge in the US (15% versus 0.4%). Current securitisation charges are also uncompetitive versus other asset classes, which makes it difficult to further diversify assets by buying securitised products.

We therefore support the introduction of a more risk-based regulatory capital treatment for STS in the S2 framework for insurance companies. The Commission has announced, but not yet issued, its proposal for a Delegated Act to amend S2 in this regard. In the interest of providing legal certainty we would urge the Commission to issue this proposal at the earliest opportunity and still in parallel to the legislative process on the STS proposal.

9. Administrative and criminal penalties for non-compliance should be proportionate and applied to all market sectors

The need for administrative and criminal penalties for deliberately erroneous or misleading actions by the parties involved in a securitisation transaction is not questioned. However, such high standard of compliance seems to be established only for securitisations and not for any other funding or investment instrument, regardless of its risks. Such an approach would perpetuate the stigma associated with the sector, undeservedly in Europe, and - in our view - could be detrimental to achieving the stated goal of restoring the European securitisation market

In addition, where certification is concerned, considering the high number of criteria and the number of parties interpreting them, a difference in opinion or a mistake in good faith is possible. Sanctions in such a scenario are extremely high, and would likely constitute a major disincentive for both issuers and investors when choosing financing instruments.

ANNEX

HIGH LEVEL COMPARISON BETWEEN COMMISSION PROPOSAL & COUNCIL GENERAL APPROACH

	COMMISSION	COUNCIL
STS Criteria for ABCP	Introduces transaction and programme level requirements. Homogeneous pool of underlying exposures required, underlying exposures can have a Weighted Average Life (WAL) of 2 years, and maximum maturity of 3 years.	Main substantial change relates to the maturity caps on underlying assets of ABCP programmes: • WAL reduced from 2 to 1 year (but for pools of auto loans, auto leases, and equipment lease transactions the WAL is extended to 3 years) and maximum maturity extended to 6 years • Homogeneous pool requirement to be complied with by 95% of the underlying amount of underlying exposures at all times
Verification of STS criteria	Responsibility for compliance with STS criteria lies with originators and investors. Liability for any loss or damage resulting from misleading notifications with originators and sponsors.	Allows authorised third parties to be used to assess eligibility with STS criteria - however cannot be a CRA nor provide any form of advisory or audit (or similar) to the originator/sponsor/SSPE.
Third country STS eligibility	Open approach (investment in third country securitisations only requires same due diligence performed as for EU securitisations and non-EU securitisations meet STS requirements. No equivalence regime. For non-EU originators/original lenders/SSPEs, Member States must assign one or more NCAs.	Requires that originator, sponsor and SSPE must all be established in the EU for a securitisation to the eligible for STS categorisation (applies to both ABCP and term securitisation). Introduces in the review clause a requirement to consider an equivalence regime for third party sponsors, originators and SSPEs. Review takes place 3 years after entry into force of Regulation.
Synthetics inclusion	Synthetics securitisations are not eligible to qualify as STS. Certain publically guaranteed synthetic SME securitisations (senior tranches only) can receive STS treatment under CRR art 270.	Largely unchanged, however one year after the entry into force of the Regulation, the Commission will review the inclusion of synthetics in the STS framework (preceded by EBA advice) Guarantee can also be provided by promotional entities.
Supervisory regime	Locus of supervisory regime remains at Member States level, with strong cooperation with the ESAs.	Binding mediation by ESMA only as an option of very last resort.

CRR calibration – Hierarchy of methods	Strict interpretation of Basel rules on methods to calculate bank capital against securitisation exposures. Hierarchy of methods as follows: 1) Based on internal models (SEC-IRBA) 2) Based on external ratings (SEC-ERBA) 3) Based on standardised Approach (SEC-SA)	Introduces a framed deviation from the hierarchy of methods by allowing use of the standardised approach (SEC-SA) over the external ratings based approach (SEC-ERBA). Specifies that: • Only applicable to senior, and certain mezzanine, STS positions • If capital weights calculated under ERBA are non-commensurate with those calculated under SA. This is defined as the ERBA model leading to a risk weight that is >25% higher than under the SA approach • Banks may opt to use the SA in this case, and application is subject to supervisory scrutiny (NCA can reject the use of SA) • Commission to regularly review the 25% threshold through the power to discretionarily introduce delegated acts (every two years, between the range of 15% and 35%)