



GENERAL APPROACH TO JURISDICTION SPECIFIC CRITERIA CHANGES

It is not uncommon for PCS to be approached by market participants suggesting new criteria or amending existing criteria to reflect the specificities of a given jurisdiction. The PCS label criteria seek to define a very high level of structural quality, simplicity and transparency in securitisations. PCS also acknowledges that different jurisdictions have different legal systems and market practices and that these may well be consistent with the quality described by the PCS Label. At the same time, just because a particular law or market practice exists in a place does not *ipso facto* make it so consistent. Balancing the acknowledgement that different jurisdictions have different practices with the reality that not all practices are consistent with quality is a task the Board of the PCS Association, advised by the PCS Market Committee, must perform every time a request is made. To assist with this task, the PCS Board has created an analytical framework designed to provide consistency in the process and the intellectual approach.

In order to assist stakeholders who may wish to approach PCS with requests for jurisdiction specific criteria, the Board has chosen to publish a description of this framework. Attention must be drawn, however, to the final paragraph of this paper which stresses that this approach is not dispositive, nor does it limit the Board's discretion to decline to make criteria changes it believes, for whatever reason, are not compatible with the nature of the PCS Label.

The Board strongly recommends that this publication should be used by stakeholders requesting jurisdiction specific criteria changes to frame their arguments.

Analytical framework

When examining a request for jurisdiction specific criteria, the Board of PCS ask a number of questions designed to guide their decision. Criteria change requests for which it is possible to answer in the affirmative **ALL OF THE** questions have a much stronger likelihood of meeting with the approval of the Board.

(a) General market practice

Is the practice for which a criteria change is requested the general market practice in the relevant jurisdiction?

Practices that are universally used by financial institutions across a market are more likely to be acceptable than those that are reflective of the idiosyncratic lending practices of a small minority of lenders.

(b) Objective underlying reason

To the extent a criteria change reflects a practice that, on its face, is less strong than the current PCS criteria, is there an objective reason external to the lenders' business why this practice prevails.

Practices that are driven by objective reasons rather than by a lender's internal business reasons are more likely to be acceptable. Objective external reasons include things such as legal restrictions of general applicability or tax. Internal reasons include the desire to reduce the lender's costs or increase the lender's market share.

Put differently, if a practice introduces additional risks it must be justified by the fact that lending would be unpractical without these additional risks, not by the fact that lenders have decided that they are prepared to take additional risks for business reasons.

For example, if information provided to investors cannot be provided with the frequency requested because to do so would violate a country's privacy laws that is an objective external reason. If information cannot be provided because lenders have never been willing to shoulder the cost that is an internal reason.

(c) Long standing practice

Is the practice for which a criteria change is requested a long standing practice?

If a practice is new, even if it is driven by an objective external reason – eg a recent change in tax law – it will not be possible to determine whether such change could have some unforeseen and unintended consequences that would weaken the securitisation's structural integrity in the future. Therefore, a practice that has stood for many years is more likely to be acceptable than a new practice. In this respect, "many years" should be looked at in terms of decades and not a few years.

(d) What impact does this practice have?

Can it be shown that, despite the relevant practice, lending in the relevant jurisdiction and asset class remains prudent when compared to similar lending elsewhere?

Even if a practice is universal in a given jurisdiction, results from a legal requirement and has been in force for decades, it may still be the case that this results in serious material weakness of a securitisation.

Therefore, practices where it is possible to show data that demonstrates that, notwithstanding what could appear to be a weakness, the relevant asset class performs in line with the same asset class in other countries, are more likely to be acceptable. As with (c) above, such data must span a number of years.

To summarise: Can you show that this is a universal practice that has been done for an objective reason over many years and can you demonstrate that it appears to have no adverse effect on the performance of your assets or the strength of the securitisation?



Please note that this analytical framework is there as a guide. It does not follow that any criteria change requested where these questions can be answered in the affirmative will always be approved by the Board. The Board will start with this analysis but may well determine, using its experience, knowledge and reasoning that, notwithstanding the affirmative answers, the requested criteria are not consistent with the PCS Label.