

13 November 2020: this guidance document supports the draft transitional directions published as part of CP13/20 and is subject to further updates. The final version will be published close to the end of the transition period.

## **The Securitisation Regulation**

### **Guidance on the PRA's transitional direction**

#### **Introduction**

- This document provides guidance on the PRA's transitional direction in relation to firms' obligations in the context of the Securitisation (Amendment) (EU Exit) Regulations 2019. The PRA's transitional direction is made under the temporary transitional power (**TTP**) conferred on the regulators by Parliament.
- Firms should have regard to this guidance while the transitional relief granted under the direction is in effect. Firms should note that this guidance is non-binding in nature, that it may be amended from time-to-time and that the direction should be followed in the case of any inconsistency with this guidance.
- The transitional direction will come into effect at the end of the transition period (11pm on 31 December 2020) and will apply until 31 March 2022 unless the PRA decides to make any changes to this timing in the future. This document refers to the period when the transitional direction is in effect as the '**TTP period**'.
- Any reference to an EU regulation, including to a Binding Technical Standard, is a reference to the UK version of that regulation, unless otherwise stated. The UK version includes any modifications made by Parliament, HM Treasury or the relevant regulators.
- The PRA's transitional direction relates to obligations that the PRA supervises. Where a PRA-authorized firm is also subject to obligations, which the FCA supervises (in particular, the framework that applies to issuers of Simple, Transparent and Standardised ('STS') securitisation) firms are referred to the FCA's transitional direction and associated guidance.
- For further details on the PRA's general approach to the exercise of the transitional direction, firms should consult:
  - a. the Bank of England Consultation Paper | PRA Consultation Paper CP13/20 on 'the UK Withdrawal from the EU: Changes before the end of the transition period';
  - b. the Bank of England's Policy Statement on the amendments to financial services legislation under the European Union (Withdrawal) Act 2018 (PS5/19); and
  - c. the general guidance provided with the PRA's transitional direction (published on 1 October 2020).<sup>1</sup>

#### **1. Definitions**

- a. The amendments made to the definition of 'sponsor' in the Securitisation (Amendment) (EU Exit) Regulations 2019 are not affected by transitional direction. Therefore, credit institutions and investments firms located both in the UK and outside the UK may qualify as

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<sup>1</sup> Available at: <<https://www.bankofengland.co.uk/-/media/boe/files/eu-withdrawal/guidance-on-pra-transitional-direction.pdf?la=en&hash=7878A650F16780D607EB4272075E364DE2BD5B35>>

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sponsors. Firms may also continue to qualify as a sponsor where they delegate the day-to-day active portfolio management to a third party. The third party entity must be authorised to manage assets belonging to another person in accordance with the law of the country in which the entity is established.

## **2. Due Diligence Requirements (Article 5 Securitisation Regulation)**

- a. As a consequence of the application of the direction, when verifying the points listed in Article 5(1) prior to holding a securitisation position, firms should distinguish as appropriate between investments in securitisations where the parties are located in the UK and EU, on the one hand, and investments in securitisations where the parties are located in other jurisdictions, on the other.
- b. Modifications to the obligation to carry out a due diligence assessment of the compliance of a securitisation notified as STS with the STS requirements are exempted from the transitional direction. Therefore, with regard to a securitisation notified as STS, firms should comply with the obligation to carry out the relevant due-diligence assessment (that obligation is modified by Regulation 7(3) of the Securitisation (Amendment) (EU Exit) Regulations 2019).

## **3. Risk retention requirements (Article 6 Securitisation Regulation)**

- During the TTP period, as a consequence of the application of the transitional direction:
  - a. in the circumstances specified in Article 6(4) of the Securitisation Regulation, the risk retention requirements outlined in Article 6(1) of the Securitisation Regulation may be satisfied on the basis of the consolidated situation of the related EU parent credit institution, EU financial holding company or EU mixed financial holding company; and
  - b. the risk retention requirements outlined in Article 6(1) of the Securitisation Regulation do not apply where the securitised exposures are exposures to, or fully, unconditionally and irrevocably guaranteed by, regional governments, local authorities and public sector entities of EU Member States.

## **4. Disclosure requirements (Article 7 Securitisation Regulation)**

- a. Obligations relating to securitisation repositories are exempted from the transitional direction. Therefore, the requirement to make information for a securitisation transaction available via a securitisation repository (where a securitisation repository exists) should be read to refer only to securitisation repositories registered with the FCA.

## **5. Transitional provisions**

- a. Articles 43(5) and (6) of the Securitisation Regulation contains transitional measures for securitisations where the securities were issued before 1 January 2019. As a consequence of the application of the PRA's transitional direction, where the transitional measures listed in Articles 43(5) and (6) of the Securitisation Regulation also apply, firms may

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continue during the TTP period to recognise preferential treatments afforded to EU assets and exposures which existed in the legislation referred to in Articles 43(5) and (6) as it applied at 31 December 2018. This includes:

- i. In the circumstances specified in Article 405(2) of Regulation 575/2013 (as it applied at 31 December 2018) (**CRR**), the risk retention requirements outlined in Article 405(1) CRR may be satisfied on the basis of the consolidated situation of the related EU parent credit institution, EU financial holding company or EU mixed financial holding company.
- ii. The risk retention requirements outlined in Article 405(1) CRR do not apply where the securitised exposures are exposures on or fully, unconditionally and irrevocably guaranteed by regional governments, local authorities and public sector entities of Member States.