

## Appendix 3 relating to Part 1: Draft BTS EU Exit Instruments

### Draft BTS EU (Exit) Instruments for the **CRR Binding Technical Standards (BTS)**:

- EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (CAPITAL REQUIREMENTS) (EU EXIT) (No. 1) INSTRUMENT [YEAR]

### Draft BTS EU Exit Instrument for the **Securitisation Regulation Binding Technical Standards (BTS)**:

- EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (SECURITISATION) (EU EXIT) INSTRUMENT [YEAR]

### FCA Consultation on changes to joint **MiFID Binding Technical Standards (BTS)**:

- FCA CP18/28 'Brexit: proposed changes to the Handbook and Binding Technical Standards – first consultation'<sup>1</sup>.

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<sup>1</sup> October 2018: <https://www.fca.org.uk/publications/consultation-papers/cp18-28-brexit-proposed-changes-handbook-bts-first-consultation>.

**Draft update to the Appendix of Bank of England Consultation Paper 'UK withdrawal from the EU: Changes to PRA Rulebook and onshored Binding Technical Standards': New text is underlined.**

## **EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (CAPITAL REQUIREMENTS) (EU EXIT) (No. 1) INSTRUMENT [YEAR]**

### **Powers exercised**

- A. The Prudential Regulatory Authority (the "PRA"), being the appropriate regulator within the meaning of the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (the "Regulations"), having carried out the consultations required by regulation 5 of the Regulations and with the approval of the Treasury, makes this instrument in exercise of the powers conferred by regulations 3 and 4 of the Regulations.

### **Pre-conditions to making**

- B. The PRA and the FCA are the appropriate regulators for the Capital Requirements EU Regulations.
- C. The PRA proposes to exercise the power in regulation 3 of the Regulations to modify the Capital Requirements EU Regulations and considers that (a) Condition A is satisfied and (b) the modifications to the Capital Requirements EU Regulations can most appropriately be made by using the procedure set out in regulation 4 of the Regulations.
- D. The PRA has consulted the FCA on a division of responsibility and on the modifications contained in Annexes A to P to this instrument in accordance with regulations 3 and 5 of the Regulations.
- E. [A draft of] this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

### **Interpretation**

- F. In this instrument –
- (a) "the Act" means the European Union (Withdrawal) Act 2018;
  - (b) "the Capital Requirements EU Regulations" means the EU Regulations specified in Part 4 of the Schedule to the Regulations under the headings "Capital Requirements Directive" and "Capital Requirements Regulation";
  - (c) "exit day" has the meaning given in the Act;
  - (d) "the FCA" means the Financial Conduct Authority; and
  - (e) "Condition A" means the condition defined in regulation 4(2) of the Regulations;

### **Division**

- G. Each Capital Requirements EU Regulation, as it has effect in domestic law by virtue of section 3 of the Act, is divided into two identical versions of the same, headed "Part 1 (FCA)" and "Part 2 (PRA)" respectively.
- H. Immediately before Article 1 in Part 1 (FCA) in those regulations is inserted:

*"Article A1*

This Part of the Regulation applies to persons regulated solely by the FCA."

- I. Immediately before Article 1 in Part 2 (PRA) is inserted:  
*“Article A1*

This Part of the Regulation applies to PRA-authorised persons (within the meaning of section 2B(5) of the Financial Services and Markets Act 2000).”

**Modifications to Part 2 (PRA)**

- J. In each of the specified Capital Requirements EU Regulations listed in Part 4 under the heading “Capital Requirements Regulation”, omit the words “This Regulation shall be binding in its entirety and directly applicable in all Member States”.
- K. Additionally, the PRA makes the modifications in the Annex listed in column (2) below to the corresponding Capital Requirements EU Regulation (or part thereof) listed in column (1) below.

(1)	(2)
Part 2 (PRA) of Commission Delegated Regulation (EU) 527/2014	A
Part 2 (PRA) of Commission Delegated Regulation (EU) 604/2014	B
Part 2 (PRA) of Commission Delegated Regulation (EU) 1152/2014	C
Part 2 (PRA) of Commission Implementing Regulation (EU) 2016/2070	D
Part 2 (PRA) of Commission Delegated Regulation (EU) 2017/180	E
Part 2 (PRA) of Commission Delegated Regulation 2014/241	F
Part 2 (PRA) of Commission Delegated Regulation 2014/523	G
Part 2 (PRA) of Commission Delegated Regulation 2014/525	H
Part 2 (PRA) of Commission Delegated Regulation 2014/529	I
Part 2 (PRA) of Commission Delegated Regulation 2014/680	J
Part 2 (PRA) of Commission Implementing Regulation 1030/2014	K
Part 2 (PRA) of Commission Delegated Regulation 2014/1187	L
Part 2 (PRA) of Commission Delegated Regulation 2015/1555	M
Part 2 (PRA) of Commission Delegated Regulation 2015/1556	N

Part 2 (PRA) of Commission Delegated Regulation 2018/171	O
Part 2 (PRA) of Commission Delegated Regulation 2018/728	P
<u>Part 2 (PRA) of Commission Delegated Regulation 602/2014</u>	<u>Q</u>
<u>Part 2 (PRA) of Commission Delegated Regulation 625/2014</u>	<u>R</u>
<u>Part 2 (PRA) of Commission Delegated Regulation 206/1801</u>	<u>S</u>
<u>Part 2 (PRA) of Commission Delegated Regulation 2018/959</u>	<u>I</u>

**Commencement**

L. This instrument comes into force on exit day.

**Citation**

M. This instrument may be cited as the Technical Standards (Capital Requirements) (EU Exit) (No.1) Instrument [YEAR].

**By order of the Prudential Regulation Committee**

[DATE]

*Draft update to the Appendix of Bank of England Consultation Paper 'UK withdrawal from the EU: Changes to PRA Rulebook and onshored Binding Technical Standards': There are no updates to Annexes A to P of the Appendix to that CP.*

**Draft update to the Appendix of Bank of England Consultation Paper 'UK withdrawal from the EU: Changes to PRA Rulebook and onshored Binding Technical Standards': Annexes Q, R, S and T are new additions to the Appendix of that CP.**

## Annex Q

### ADDITIONAL RISK WEIGHTS

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#### MODIFICATIONS TO PART 2 (PRA) OF EU REGULATION 602/2014

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- 1.1 In this Annex new text is underlined and deleted text is struck through.
- 1.2 Part 2 (PRA) of EU Regulation No 602/2014 means Commission Delegated Regulation (EU) No 602/2014 of 4 June 2014 laying down implementing technical standards for facilitating the convergence of supervisory practices with regard to the implementation of additional risk weights according to Regulation (EU) No 575/2013 of the European Parliament and of the Council as it forms part of domestic law by virtue of section 3 of the Act and this Instrument, is modified as follows:

...

#### *Article 1A*

#### **Definitions**

In this Regulation, references to “Regulation (EU) No 575/2013” are to be read as references to Regulation (EU) No 575/2013 in the version applicable on 31 December 2018, together with any amendments made to such provisions by the Capital Requirements (Amendment) (EU Exit) Regulations 2018.

#### *Article 1*

#### **General considerations**

When assessing whether institutions have failed to meet the requirements set out in Articles 405, 406 or 409 of Regulation (EU) No 575/2013, in any material respect for reasons of negligence or of omission, for securitisation positions issued on or after 1 January 2011 and before 1 January 2014, competent authorities may take into account whether those institutions complied continuously between the date of issuance and 31 December 2013 with the requirements specified in those elements of the Capital Requirements Directive (Handbook Amendments) Instrument 2010 (FSA 2010/29) which implemented Article 122a of Directive 2006/48/EC of the European Parliament and of the Council and in the Guidelines to Article 122a of Directive 2006/48/EC of the Committee of European Banking Supervisors dated 31 December 2010.

**Draft update to the Appendix of Bank of England Consultation Paper 'UK withdrawal from the EU: Changes to PRA Rulebook and onshored Binding Technical Standards': Annexes Q, R, S and T are new additions to the Appendix of that CP.**

## Annex R

### REQUIREMENTS RELATING TO EXPOSURES TO TRANSFERRED CREDIT RISK

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#### MODIFICATIONS TO PART 2 (PRA) OF EU REGULATION 625/2014

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- 1.3 In this Annex new text is underlined and deleted text is struck through.
- 1.4 Part 2 (PRA) of EU Regulation 625/2014 means Commission Delegated Regulation (EU) No 625/2014 of 13 March 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council by way of regulatory technical standards specifying the requirements for investor, sponsor, original lenders and originator institutions relating to exposures to transferred credit risk as it forms part of domestic law by virtue of section 3 of the Act and this Instrument, is modified as follows:

...

#### *Article 1A*

#### **Definitions**

#### **In this Regulation:**

- (1) In this Regulation, references to “Regulation (EU) No 575/2013” are to be read as references to Regulation (EU) No 575/2013 in the version applicable on 31 December 2018, together with any amendments made to such provisions by the Capital Requirements (Amendment) (EU Exit) Regulations 2018; and
- (2) a reference to a provision of a sourcebook is to a sourcebook in the FCA Handbook of Rules and Guidance made by the FCA under FSMA as amended by rule-making instruments made before 31 December 2018 under FSMA.

...

#### *Article 4*

#### **Fulfilment of the retention requirement through a synthetic or contingent form of retention**

...

2. Where an entity other than a credit institution as defined in Article 4(1)(1) of Regulation (EU) No 575/2013 acts as a retainer through a synthetic or contingent form of retention, the interest retained on a synthetic or contingent basis shall be fully collateralised in cash and held on a segregated basis as ‘clients’ funds as referred to in rule 7.12.1R of the Client Assets sourcebook ~~Article 13(8) of Directive 2004/39/EC of the European Parliament and of the Council (1).~~

**Draft update to the Appendix of Bank of England Consultation Paper 'UK withdrawal from the EU: Changes to PRA Rulebook and onshored Binding Technical Standards': Annexes Q, R, S and T are new additions to the Appendix of that CP.**

## Annex S

### MAPPING CREDIT ASSESSMENTS OF EXTERNAL CREDIT ASSESSMENT INSTITUTIONS FOR SECURITISATION

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#### MODIFICATIONS TO PART 2 (PRA) OF EU REGULATION 2016/1801

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- 1.5 In this Annex new text is underlined and deleted text is struck through.
- 1.6 Part 2 (PRA) of EU Regulation 2016/1801 means Commission Delegated Regulation (EU) No 2016/1801 of 11 October 2016 on laying down implementing technical standards with regard to the mapping of credit assessments of external credit assessment institutions for securitisation in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council as it forms part of domestic law by virtue of section 3 of the Act and this Instrument, is modified as follows:

...

#### *Article 1*

##### **Mapping tables under the standardised approach**

The correspondence of the rating categories of each ECAI for securitisation positions subject to the standardised approach with the credit quality steps under the standardised approach set out in Table 1 of Article 251 of Regulation (EU) No 575/2013 (in the version applicable on 31 December 2018, together with any amendments made to such provision by the Capital Requirements (Amendment) (EU Exit) Regulations 2018).

#### *Article 2*

##### **Mapping tables under the ratings-based method**

The correspondence of the rating categories of each ECAI for securitisation positions subject to the IRB approach with the credit quality steps set out in Table 4 of Article 261(1) of Regulation (EU) No 575/2013 (in the version applicable on 31 December 2018, together with any amendments made to such provision by the Capital Requirements (Amendment) (EU Exit) Regulations 2018) is that set out in Annex II to this Regulation.

**Draft update to the Appendix of Bank of England Consultation Paper 'UK withdrawal from the EU: Changes to PRA Rulebook and onshored Binding Technical Standards': Annexes Q, R, S and T are new additions to the Appendix of that CP.**

## Annex T

### OPERATIONAL RISK

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#### MODIFICATIONS TO PART 2 (PRA) OF REGULATION (EU) 2018/959

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- 1.7 In this Annex new text is underlined and deleted text is struck through.
- 1.8 Part 2 (PRA) of EU Regulation No 2018/959 means Commission Delegated Regulation (EU) No 2018/959 of 14 March 2018 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards of the specification of the assessment methodology under which competent authorities permit institutions to use Advanced Measurement Approaches for operational risk, according to Regulation (EU) No 575/2013 of the European Parliament and of the Council as it forms part of domestic law by virtue of section 3 of the Act and this Instrument, is modified as follows:

...

#### *Article 2*

#### **Definitions**

For the purposes of this Delegated Act, the following definitions shall apply:

...

- (15) 'model risk' means the potential loss an institution may incur, as a consequence of decisions that could be principally based on the output of internal models, due to errors in the development, implementation or use of such models;
- (16) a reference to a provision of the PRA rulebook is to the rules made by the PRA under FSMA as amended by rule-making instruments made before exit day under FSMA or EU Exit Instruments made at any time under the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018;
- (17) a reference to a provision of a sourcebook is to a sourcebook in the FCA Handbook of Rules and Guidance made by the FCA under FSMA as amended by rule-making instruments made before exit day under FSMA or EU Exit Instruments made at any time under the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018.

...

#### *Article 4*

#### **Operational risk events related to model risk**

Competent authorities shall confirm the following when assessing that an institution identifies, collects and treats data on operational risk events and losses that are related to model risk, ~~as defined in point (11) of Article 3(1) of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013,~~ for the purposes of both management of operational risk and calculation of the AMA own funds requirement:

...

## *Article 8*

### **Independent operational risk management function**

1. Competent authorities shall assess the independence of the operational risk management function from the institution's business units by confirming at least the following:

...

(d) that the head of the operational risk management function meets at least the following requirements:

...

(v) allocation of a budget for the operational risk management function by the head of risk management referred to in ~~the fourth subparagraph of Article 76(5) of Directive 2013/36/EU~~ rule 3.5 of the Risk Control Part of the PRA Rulebook and rule 7.1.22 of the FCA Senior Management Arrangements, Systems and Controls Sourcebook or a member of the management body in a supervisory capacity and not by a business unit or executive function.

...

## *Article 11*

### **Use of the AMA**

...

(c) that the operational risk measurement system is used also for the purposes of the institution's internal capital adequacy assessment process referred to in ~~Article 73 of Directive 2013/36/EU~~ rules 3.1(1) and 3.4 of the Internal Capital Adequacy Assessment Part of the PRA Rulebook and rules 2.2.7R, 2.2.12R and 2.2.13R of the FCA Prudential Sourcebook for Investment Firms.

...

## EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (SECURITISATION) (EU EXIT) INSTRUMENT [YEAR]

### Powers exercised

- A. The Prudential Regulatory Authority (the “PRA”), being the appropriate regulator within the meaning of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (the “Regulations”), with the consent of the FCA (“the FCA”) having carried out the consultations required by regulation 5 of the Regulations and with the approval of the Treasury, makes this instrument in exercise of the powers conferred by regulations 3 of the Regulations.

### Pre-conditions to making

- B. The PRA and the FCA are the appropriate regulators for the Securitisation EU Regulations.
- C. The PRA proposes to exercise the power in regulation 3 of the Regulations to modify the Securitisation EU Regulation.
- D. The FCA has been consulted on the modifications contained in the Annex to this instrument in accordance with regulation 5 of the Regulations and has consented to the modifications contained in the Annex to this instrument in accordance with regulation 3(2) of the Regulations.
- E. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

### Interpretation

- F. In this instrument –
- (a) “the Act” means the European Union (Withdrawal) Act 2018;
  - (b) “the Securitisation EU Regulation” means Commission Delegated Regulation [●]<sup>1</sup>, which regulation is specified in [Part 4 of the Schedule to the Regulations under the heading “Securitisation Regulation”]; and
  - (c) “exit day” has the meaning given in the Act.

### Modifications

- G. The PRA makes the modifications in the Annex below to the Securitisation EU Regulation.

### Commencement

- H. This instrument comes into force on exit day.

### Citation

- I. This instrument may be cited as the Technical Standards (Securitisation) (EU Exit) Instrument [YEAR].

### By order of the Prudential Regulation Committee

[DATE]

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<sup>1</sup><https://eba.europa.eu/documents/10180/2298183/Draft+RTS+on+risk+retention+%28EBA-RTS-2018-01%29.pdf/a77e1aad-5cf9-444f-9e7b-fa2d948df1d6>

## Annex

### DRAFT: REQUIREMENTS FOR RISK RETENTION

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#### MODIFICATIONS TO EU REGULATION [●]

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- 1.1 In this Annex new text is underlined and deleted text is struck through.
- 1.2 EU Regulation [●] means Commission Delegated Regulation (EU) No [●] of [●]<sup>2</sup> specifying the requirements for originators, sponsors and original lenders relating to risk retention pursuant to Article 6(7) of Regulation (EU) 2017/2402 as it forms part of domestic law by virtue of section 3 of the Act and this Instrument, is modified as follows:

...

#### *Article 4*

#### **Fulfilment of the retention requirement through a synthetic or contingent form of retention**

...

2. Where an entity other than a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 acts as a retainer through a synthetic or contingent form of retention, the interest retained on a synthetic or contingent basis shall be fully collateralised in cash and held on a segregated basis as client funds as referred to in rule 7.12.1R of the Client Assets sourcebook in the FCA Handbook of Rules and Guidance published by the FCA containing rules made by the FCA under FSMA as the Client Assets sourcebook has effect on exit day 16(9) of Directive 2014/65/EU of the European Parliament and of the Council(8).

...

#### *Article 14*

#### **Retention on a consolidated basis**

A mixed financial holding company ~~established in the Union within the meaning of Directive 2002/87/EC~~, a UK parent institution or a financial holding company established in the ~~Union~~United Kingdom satisfying, in accordance with Article 6(4) of Regulation (EU) 2017/2402, the retention requirement on the basis of its consolidated situation shall, in the case the retainer is no longer included in the scope of supervision on a consolidated basis, ensure that one or more of the remaining entities included in the scope of supervision on a consolidated basis assumes exposure to the securitisation so as to ensure the ongoing fulfilment of the requirement. In this paragraph—

- (a) ‘credit institution’, ‘financial holding company’, ‘financial institution’, institution, ‘investment firm’, subsidiary and ‘UK parent institution’ have the meaning given in Article 4(1) of Regulation (EU) No 575/2013; and

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<sup>2</sup><https://eba.europa.eu/documents/10180/2298183/Draft+RTS+on+risk+retention+%28EBA-RTS-2018-01%29.pdf/a77e1aad-5cf9-444f-9e7b-fa2d948df1d6>

(b) 'mixed financial holding company' has the meaning given in regulation 1(2) of the Financial Conglomerates and Other Financial Groups Regulations 2004.

...

#### *Article 16*

#### **Assets transferred to the SSPE**

...

2. For the purpose of Article 6(2) of Regulation (EU) 2017/2402, and where no communication to investors or potential investors has taken place, as referred to in recital No 11 of ~~that~~ Regulation (EU) 2017/2402 (as Regulation 2017/2402 has effect immediately before exit day), the assessment of the intent of the originator shall take into account the actions the originator has taken to comply with that Article. These shall include any policies and procedures that the originator has put in place and applies internally in order to ensure that the securitised assets would reasonably have been expected not to lead to higher losses than the losses on comparable assets held on its balance sheet.

#### *Article 17*

#### **Entry into force**

...

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

...

## List of BTS in the PRA Consultation

BTS being amended – Joint BTS		Instrument
Joint PRA/FCA BTS the PRA is leading on which are being split	<p style="text-align: center;"><u>CRR</u></p> <p>602/2014 – BTS for facilitating the convergence of supervisory practices with regard to the implementation of additional risk weights</p> <p>625/2014 – BTS specifying the requirements for investor, sponsor, original lenders and originator institutions relating to exposures to transferred credit risk</p> <p>2016/1801 – BTS on mapping of credit assessments of external credit assessment institutions for securitisation</p> <p>2018/959 – BTS of the specification of the assessment methodology under which competent authorities permit institutions to use Advanced Measurement Approaches for operational risk</p>	EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (CAPITAL REQUIREMENTS) (EU EXIT) (No. 1) INSTRUMENT [YEAR]
Joint PRA/FCA BTS the FCA is leading on which are not being split	<p style="text-align: center;"><u>MiFID</u></p> <p>2017/589 – BTS specifying the organisational requirements of investment firms engaged in algorithmic trading</p> <p>2017/1945 – BTS with regard to notifications by and to applicant and authorised investment firms</p> <p>2017/1946 – BTS for an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm</p>	FCA CP18/28
Joint PRA/FCA BTS the PRA is leading on which are not being split	<p style="text-align: center;"><u>Securitisation Regulation</u></p> <p>Draft BTS specifying the requirements for originators, sponsors and original lenders relating to risk retention</p>	EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (SECURITISATION) (EU EXIT) INSTRUMENT [YEAR]