Draft Regulations laid before Parliament under paragraph 1(1) and (2) of Schedule 7 to the European (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2019 No.

EXITING THE EUROPEAN UNION
FINANCIAL SERVICES

The Securitisation (Amendment) (EU Exit) Regulations 2019

Made - - - - **
Coming into force in accordance with regulation 1(2) and (3)

The Treasury make the following Regulations in exercise of the powers conferred by sections 8(1) and 23(1) and (2) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(**1**).

A draft of these Regulations has been laid before and approved by a resolution of each House of Parliament in accordance with paragraph 1(1) and (2) of Schedule 7 to the European Union (Withdrawal) Act 2018.

PART 1

General

Citation and commencement

1.—(1) These Regulations may be cited as the Securitisation (Amendment) (EU Exit) Regulations 2019.

(2) These Regulations come into force on exit day.

(3) Part 3 of these Regulations comes into force immediately after Part 10 of the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019(**2**).

Interpretation

2. In these Regulations—

(**1**) 2018 c. 16.
(**2**) S.I. 2019/ [ ].

"the Capital Requirements Regulation" means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012;

"the CRA Regulation" means Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies;

"the CRR amending regulation" means Regulation (EU) 2017/2401 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms;

"the EMIR Regulation" means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;

"the Liquidity Commission Delegated Regulation" means Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions; and

"the Securitisation Regulation" means Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No. 1060/2009 and (EU) No. 648/2012.

PART 2

Amendment of the Securitisation Regulation

CHAPTER 1

Introductory provision

Amendments

3. The Securitisation Regulation is amended in accordance with this Part.

CHAPTER 2

Amendment of Chapter 1 of the Securitisation Regulation (general provisions)

Article 2 (definitions)

4.—(1) Article 2 is amended as follows.

(2) After "the following definitions apply:" insert the following points—

"(A1) 'Regulation (EU) No 575/2013' means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012;

(A2) 'Regulation (EU) No 648/2012' means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;

(A3) 'the 2000 Act' means the Financial Services and Markets Act 2000(**3**);

(**3**) 2000 c.8.

(A4) 'competent authority' means an authority designated or required to be designated for the purpose of supervising compliance by an entity with obligations set out in this Regulation; and in relation to an entity, means the authority designated for the purpose of supervising compliance with such obligations by that entity(**4**);

(A5) 'the FCA' means the Financial Conduct Authority;

(A6) 'the FCA Handbook' means the Handbook of Rules and Guidance published by the FCA containing rules made by the FCA under the 2000 Act (as that Handbook has effect on exit day);

(A7) 'the PRA' means the Prudential Regulation Authority;

(A8) 'third country' means a country other than the United Kingdom;".

(3) For point (5) (definition of 'sponsor') substitute—

"(5) 'sponsor' means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 or an investment firm as defined in paragraph 1A of Article 2 of Regulation 600/2014/EU, whether located in the United Kingdom or in a third country, which—

(a) is not an originator; and

(b) either—

(i) establishes and manages an asset-backed commercial paper programme or other securitisation that purchases exposures from third party entities; or

(ii) establishes an asset-backed commercial paper programme or other securitisation that purchases exposures from third party entities and delegates the day-to-day active portfolio management involved in that securitisation to an entity which is authorised to manage assets belonging to another person in accordance with the law of the country in which the entity is established.".

(4) In point (12) (definition of 'institutional investor')—

(a) in point (a) for "point (1) of Article 13 of Directive 2009/138/EC" substitute "section 417(1) of the 2000 Act";

(b) in point (b) for "point (4) of Article 13 of Directive 2009/138/EC" substitute "section 417(1) of the 2000 Act"(**5**);

(c) for points (c) to (g) substitute—

"(c) an occupational pension scheme as defined in section 1(1) of the Pension Schemes Act 1993(**6**);

(d) an AIFM (as defined in regulation 4(1) of the Alternative Investment Fund Managers Regulations 2013(**7**)) which markets or manages AIFs (as defined in regulation 3 of those Regulations) in the United Kingdom;

(e) a management company as defined in section 237(2) of the 2000 Act(**8**);

(**4**) For the designation of competent authorities see Article 29(1) to (3B) of the Securitisation Regulation as substituted by these Regulations and S.I. 2018/1288, regulation 4.

(**5**) The definitions of "insurance undertaking" and "reinsurance undertaking" were substituted by S.I. 2019/XXX [*the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019*].

(**6**) 1993 c. 48. The definition of "occupational pension scheme" was inserted by section 239 of the Pensions Act 2004 (c. 35) and amended by S.I. 2007/3014.

(**7**) S.I. 2013/1773, as amended by S.I. 2019/XXX [*the Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019*].

(**8**) The definition was substituted by S.I. 2019/XXX [*the Collective Investment Schemes (Amendment) (EU Exit) Regulations 2019*].

(f) a UCITS as defined by section 236A of the 2000 Act(**9**), which is an authorised open ended investment company as defined in section 237(3) of that Act;

(g) a CRR firm as defined by Article 4(1)(2A) of Regulation (EU) No 575/2013(**10**);".

(5) Omit the words after point (23).

Article 3 (selling of securitisations to retail clients)

5. In Article 3, in paragraph (1)—

(a) in the opening words for "point 11 of Article 4(1) of Directive 2014/65/EU" substitute "rule 3.4.1 of the Conduct of Business sourcebook of the FCA Handbook (retail clients)"; and

(b) in point (a) for "Article 25(2) of Directive 2014/65/EU" substitute "rules 9A.2.1 and 9A.2.16 of the Conduct of Business sourcebook of the FCA Handbook (assessing suitability to buy and hold an investment)".

Article 4 (requirements for securitisation special purpose entities)

6. In Article 4, in point (b) for "a Member State" substitute "the United Kingdom".

CHAPTER 3

Amendment of Chapter 2 of the Securitisation Regulation (provisions applicable to all securitisations)

Article 5 (due-diligence requirements for institutional investors)

7.—(1) Article 5 is amended as follows.

(2) In paragraph 1—

(a) in points (a) and (c) for "the Union" substitute "the United Kingdom";

(b) in point (e) at the beginning insert "if established in the United Kingdom,"; and

(c) after point (e) insert—

"(f) if established in a third country, the originator, sponsor or SSPE has, where applicable—

(i) made available information which is substantially the same as that which it would have made available in accordance with point (e) if it had been established in the United Kingdom; and

(ii) has done so with such frequency and modalities as are substantially the same as those with which it would have made information available in accordance with point (e) if it had been so established.".

(3) In paragraph 3, in the first subparagraph, after point (c) insert—

"(d) in point (c)—

(i) the reference to a securitisation notified as STS in accordance with Article 27 includes a reference to a securitisation notified in accordance with that Article before exit day, or before the expiry of a period of two years beginning with exit

(**9**) Section 236A was inserted by S.I. 2019/XXX [*the Collective Investment Schemes (Amendment) (EU Exit) Regulations 2019*].
(**10**) Point (2A) was inserted by S.I. 2018/1401.

day, where the person responsible for the notification (the originator and sponsor or, in the case of an ABCP programme, the sponsor) is established in an EEA State;

(ii) in relation to any securitisation so notified, the reference to the STS notification is a reference to the notification of that securitisation as STS, and a reference to a numbered Article is a reference to the Article so numbered of this Regulation as it had or has effect in relation to an EEA State at any time on and after the date of the notification and before the end of the period referred to in paragraph (i).".

(4) In paragraph (4), in points (e) and (f) for "authorities" substitute "authority".

(5) In paragraph 5—

(a) omit "Member States shall ensure that,"; and

(b) for "under Articles 32 and 33" substitute "imposed as a result of the failure".

Article 6 (risk retention)

8.—(1) Article 6 is amended as follows.

(2) In paragraph 2 for "pursuant to Articles 32 and 33" substitute "for the contravention".

(3) In paragraph 4—

(a) for the first subparagraph substitute—

"Where—

(a) a mixed financial holding company,

(b) a UK parent institution,

(c) a financial holding company established in the United Kingdom, or

(d) a subsidiary of such a company or institution,

as an originator or sponsor, securitises exposures from one or more credit institutions, investment firms or other financial institutions which are included in the scope of supervision on a consolidated basis, the requirements set out in paragraph 1 may be satisfied on the basis of the consolidated situation of the mixed financial holding company, UK parent institution or financial holding company concerned.";

(b) in the second subparagraph for the words from "and to the Union" to the end substitute "and, if the originator or sponsor is a subsidiary, to the mixed financial holding company, UK parent institution or financial holding company which is the parent undertaking of the subsidiary"; and

(c) after the second subparagraph insert—

"In this paragraph—

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

(b) 'mixed financial holding company" has the meaning given in regulation 1(2) of the Financial Conglomerates and Other Financial Groups Regulations 2004(**11**).".

(4) In paragraph 5, in point (b) omit "of Member States".

(5) In paragraph 7—

(**11**) S.I. 2004/1862, as amended by S.I. 2019/XXX [*the Financial Conglomerates and other Financial Groups (Amendment) (EU Exit) Regulations 2019*].

(a) in the first subparagraph for the words from "EBA," to "draft regulatory" substitute "The FCA and the PRA, acting jointly, may make"; and

(b) omit the second and third subparagraphs.

Article 7 (transparency requirements for originators, sponsors and SSPEs)

9.—(1) Article 7 is amended as follows.

(2) In paragraph 1—

(a) in the first subparagraph—

(i) in the opening words for "authorities" substitute "authority";

(ii) in point (c) for "where a prospectus has not been drawn up in compliance with Directive 2003/71/EC of the European Parliament and of the Council" substitute "where section 85 of the 2000 Act (prohibition of dealing etc in transferable securities without approved prospectus) and rules made by the FCA for the purposes of Part 6 of the 2000 Act (official listing)(**12**) do not require a prospectus to be drawn up";

(iii) in point (g)(iv) for "competent authorities have" substitute "the competent authority has";

(b) in the fourth subparagraph for "competent authorities" substitute "the competent authority";

(c) in the sixth subparagraph for "national and Union law" substitute "the law applicable in the United Kingdom"; and

(d) in the eighth subparagraph for "Competent authorities referred to in Article 29" substitute "The competent authority".

(3) In paragraph 2, in the third subparagraph for the words from "where no prospectus has to be drawn up in compliance with Directive 2003/71/EC" substitute "for which section 85 of the 2000 Act and rules made by the FCA for the purposes of Part 6 of the 2000 Act do not require a prospectus to be drawn up".

(4) In paragraph 3—

(a) in the first subparagraph for the words from "ESMA," to "draft regulatory" substitute "The FCA and the PRA, acting jointly, may make"; and

(b) omit the second and third subparagraphs.

(5) In paragraph 4—

(a) in the first subparagraph for the words from "ESMA," to "draft implementing" substitute "the FCA and the PRA, acting jointly, may make"; and

(b) omit the second and third subparagraphs.

Article 8 (ban on resecuritisation)

10.—(1) Article 8 is amended as follows.

(2) In paragraph 2—

(a) in the first subparagraph omit "designated pursuant to Article 29(2), (3) or (4), as applicable,";

(b) in the second subparagraph—

(**12**) These are "prospectus rules"; see section 73A of the Financial Services and Markets Act 2000 (Part 6 Rules), inserted by S.I. 2005/381).

(i) omit "referred to in the first subparagraph of this paragraph";

(ii) for "resolution authority", in both places where it appears, substitute "Bank of England"; and

(c) omit the third subparagraph.

(3) In paragraph 5—

(a) in the first subparagraph for the words from "ESMA," to "draft regulatory" substitute "the FCA and the PRA, acting jointly, may make"; and

(b) omit the second subparagraph.

Article 9 (criteria for credit-granting)

11. In Article 9—

(a) in paragraph 2 for "after the entry into force of Directive 2014/17/EU" substitute "on or after 20th March 2014"; and

(b) in paragraph 4(a) for "the entry into force of Directive 2014/17/EU" substitute "20th March 2014".

CHAPTER 4

Amendment of Chapter 3 of the Securitisation Regulation (conditions and procedures for registration of a securitisation repository)

Article 10 (registration of a securitisation repository)

12.—(1) Article 10 is amended as follows.

(2) In paragraphs 1, 4 and 5 for "ESMA", wherever it appears, and in paragraph 6, in the second place where it appears, substitute "the FCA".

(3) In paragraph 2 for "the Union" substitute "the United Kingdom".

(4) Omit paragraph 3.

(5) After paragraph 5 insert—

"**5A.** For the purposes of this Article, Articles 78, 79 and 80 of Regulation (EU) No 648/2012 have effect in relation to a securitisation repository as they have effect in relation to a trade repository, but with the following modifications—

(a) a reference to a trade repository is a reference to a securitisation repository within the meaning given by point (23) of Article 2 of this Regulation; and

(b) a reference to Regulation (EU) No 648/2012 is a reference to this Regulation.".

(6) In paragraph 6 for "ESMA", in the first place where it appears, substitute "The FCA";

(7) In paragraph 7—

(a) in the first subparagraph for "ESMA shall develop draft regulatory" substitute "the FCA may make"; and

(b) omit the second and third subparagraphs.

(8) In paragraph 8—

(a) in the first subparagraph for "ESMA shall develop draft implementing" substitute "the FCA may make"; and

(b) omit the second, third and fourth subparagraphs.

Article 11 (notification and consultation with competent authorities prior to registration or extension of registration)

13. Omit Article 11.

Article 12 (examination of the application)

14. In Article 12—

(a) in paragraph 1 for "ESMA" substitute "The FCA"; and

(b) omit paragraph 2.

Articles 13 to 15 (notification of ESMA decisions relating to registration or extension of registration, powers of ESMA and withdrawal of registration)

15. For Articles 13 to 15 substitute—

"Article 13

Publication and notification of decisions

1. The FCA must publish on its website a list of securitisation repositories registered in accordance with Article 12 ('the Register').

2. On the adoption of a decision under Article 12 or 13a, the FCA must notify its decision to the securitisation repository concerned.

3. A refusal of an application to register under Article 12 comes into effect on the fifth working day following its adoption.

4. A withdrawal of registration under Article 13a takes effect:

(a) immediately upon the adoption of the decision if the notice states that is the case;

(b) on such date as may be specified in that notice; or

(c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.

5. A decision to withdraw registration on the FCA's own initiative under paragraph 1 or 2 of Article 13a may be expressed to take effect immediately (or on a specified date) only if the FCA, having regard to the ground on which it is exercising its power reasonably considers that it is necessary for the withdrawal or direction to take effect immediately (or on that date).

6. If the decision referred to in paragraph 2 is—

(a) to refuse the application for registration made under Article 12,

(b) to exercise the FCA's power under paragraph 1 or 2 of Article 13a to withdraw the registration of the securitisation repository on the FCA's own initiative, or

(c) to refuse an application made by a securitisation repository under paragraph 3 of Article 13a to withdraw the registration of the securitisation repository,

the FCA must give the securitisation repository a written notice.

7. A written notice under paragraph 6 must:

(a) give details of the decision made by the FCA;

(b) state the FCA's reasons for the decision;

(c) state when the decision takes effect;

(d) inform the securitisation repository that it may either:

(i) request a review of the decision by the FCA, and make written representations for the purpose of the review, within such period as may be specified in the notice; or

(ii) refer the matter to the Upper Tribunal ('the Tribunal') within such period as may be specified in the notice; and

(e) indicate the procedure on a reference to the Tribunal.

8. If the securitisation repository requests a review of the decision made by the FCA ('the original decision') the FCA must consider any written representations made by the securitisation repository and review the original decision.

9. On a review under paragraph 8, the FCA may make any decision ('the new decision') it could have made on the application.

10. The FCA must give the securitisation repository written notice of its decision on the review.

11. This paragraph applies to a decision—

(a) to maintain a decision to refuse an application for registration, made under Article 12;

(b) to refuse to revoke a decision made under paragraph 1 or 2 of Article 13a to withdraw the registration of the securitisation repository on the FCA's own initiative; or

(c) to maintain a decision to refuse an application from a securitisation repository under paragraph 3 of Article 13a to withdraw the registration of the securitisation repository.

12. A written notice in relation to a decision to which paragraph 11 applies must:

(a) give details of the new decision made by the FCA;

(b) state the FCA's reasons for the new decision;

(c) state whether the decision takes effect immediately or on such date as may be specified in the notice;

(d) inform the securitisation repository that it may, within such period as may be specified in the notice, refer the new decision to the Tribunal; and

(e) indicate the procedure on a reference to the Tribunal.

Article 13a

Withdrawal of registration

1. The FCA may, on its own initiative, withdraw the registration of a securitisation repository where the securitisation repository:

(a) expressly renounces the registration or has provided no services for the preceding 6 months;

(b) obtained the registration by making false statements or by any other irregular means; or

(c) no longer meets the conditions for registration.

2. The FCA may also, on its own initiative, withdraw the registration of a securitisation repository where it is desirable to do so to advance one or more of its operational objectives set out in section 1B(3) of the 2000 Act.

3. The FCA may, on an application by a securitisation repository, withdraw the registration of the securitisation repository.

4. The decision to withdraw the registration of a securitisation repository under paragraph 1, 2 or 3 must be reflected in the Register.

Article 14

Tribunal

1. A securitisation repository may, subject to paragraph 2, refer to the Tribunal the FCA's decision to:

(a) refuse to register the securitisation repository under Article 12;

(b) exercise its power under paragraph 1 or 2 of Article 13a to withdraw the registration of a securitisation repository; or

(c) refuse the securitisation repository's application under paragraph 3 of Article 13a to withdraw its registration.

2. Where there is a review under paragraph 8 of Article 13, paragraph 1 applies only in relation to the FCA's decision in response to that review.

Article 15

Enforcement provisions relating to securitisation repositories

1. In this Article 'the 2019 Regulations' means the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019(**13**).

2. Part 4 of the 2019 Regulations (specific provision for trade repositories) has effect in relation to a securitisation repository as it has effect in relation to a trade repository.

3. For the purposes of paragraph 2, Part 4 of the 2019 Regulations has effect in relation to a securitisation repository with the following modifications:

(a) ignore Chapter 1 (preliminary);

(b) in Chapter 2 and Chapter 3 (application of the 2000 Act for the purposes of this Part), including any modification of the 2000 Act which is made by that Chapter:

(i) a reference to Part 4 of the 2019 Regulations is a reference to that Part as applied by this Article;

(ii) a reference to the 2019 Regulations (other than in a reference to Part 4) is a reference to those Regulations as applied by this Article;

(iii) a reference to the EMIR regulation is a reference to this Regulation and a reference to a provision of that Regulation is a reference to the provision of this Regulation which has equivalent effect;

(iv) a reference to the registration or recognition of a trade repository under a provision of the EMIR regulation is a reference to the registration of a securitisation repository under this Regulation;

(v) a reference to a trade repository is a reference to a securitisation repository within the meaning given by point (23) of Article 2 of this Regulation;

(**13**) S.I. 2019/ [ ].

(vi) a reference to trade repository activities is a reference to the activities of centrally collecting and maintaining records of securitisations;

(vii) ignore any reference to the TRATP Regulations; and

(c) in Chapter 3, including any modification of the 2000 Act which is made by that Chapter:

(i) a reference to a provision of the 2019 Regulations is a reference to the equivalent provision of the Securitisation (Amendment) (EU Exit) Regulations 2019;

(ii) in regulation 73 (application of Part 9 of the 2000 Act (hearings and appeals), ignore paragraph (2);

(iii) in regulation 78 (application of Part 11 of the 2000 Act (information gathering and investigations)), ignore paragraph (2)(f);

(iv) in regulation 79 (application of Part 26 of the 2000 Act (notices)), ignore paragraph (8)(h) and any reference to a supervisory notice.".

Article 16 (supervisory fees)

16. Omit Article 16.

Article 17 (availability of data held in a securitisation repository)

17.—(1) Article 17 is amended as follows—

(2) In paragraph 1—

(a) omit points (a) to (e) and (h); and

(b) for point (g) substitute—

"(g) the Bank of England;".

(3) In paragraph 2—

(a) in the first subparagraph for the words from "ESMA" to "draft regulatory" substitute "The FCA, taking into account the needs of the entities referred to in paragraph 1, may make"; and

(b) omit the second and third subparagraphs.

(4) In paragraph 3—

(a) in the first subparagraph for the words from "ESMA" to "draft implementing" substitute "the FCA may make"; and

(b) omit the second and third subparagraphs.

CHAPTER 5

Amendment of Chapter 4 of the Securitisation Regulation
(simple, transparent and standardised securitisation)

Article 18 (use of the designation 'simple, transparent and standardised securitisation')

18. In Article 18—

(a) the existing text of the first paragraph becomes paragraph 1;

(b) in that paragraph, in point (a) for "ESMA" substitute "the FCA";

(c) for the existing text of the second paragraph substitute—

"**2.** The originator and sponsor involved in a securitisation which is not an ABCP programme or an ABCP transaction and is considered STS must be established in the United Kingdom.

The sponsor involved in an ABCP programme considered STS must be established in the United Kingdom.

The sponsor involved in an ABCP programme which is not considered STS must be established in the United Kingdom if an ABCP transaction within that programme is considered STS.";

(d) after paragraph (2) (substituted by paragraph (c)) insert—

"**3.** This Article has effect in relation to a relevant securitisation without the amendments made by regulation 18 of the Securitisation (Amendment) (EU Exit) Regulations 2019.

A 'relevant securitisation' is a securitisation—

(a) which meets all the requirements of Section 1 or Section 2 of this Chapter, and of which ESMA was notified pursuant to Article 27(1) before exit day, or is notified pursuant to Article 27(1) after exit day but before the expiry of a period of two years beginning with exit day; and

(b) which is included in the list referred to in Article 27(5).

In this paragraph a reference to Section 1 or Section 2 of this Chapter or to Article 27 is a reference to that Section or Article as it had or has effect in relation to an EEA State at any time on and after the date of the notification and before the end of the period referred to in the second subparagraph.".

Article 19 (simple, transparent and standardised securitisation)

19. In Article 19 omit paragraph 2.

Article 20 (requirements relating to simplicity)

20.—(1) Article 20 is amended as follows.

(2) In paragraph 8, in the third subparagraph for "(44) of Article 4(1) of Directive 2014/65/EU" substitute "(24) of Article 2(1) of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012"(**14**).

(3) In paragraph 14—

(a) in the first subparagraph for the words from "EBA" to "draft regulatory" substitute "FCA may make"; and

(b) omit the second and third subparagraphs.

Article 23 (simple, transparent and standardised ABCP securitisation)

21. In Article 23 omit paragraph 3.

Article 24 (transaction-level requirements)

22. In Article 24—

(**14**) The definition of "transferable securities" in Regulation (EU) No 600/2014 was substituted by S.I. 2018/1403.

(a) in paragraph 15—

(i) in the fourth subparagraph for "(44) of Article 4(1) of Directive 2014/65/EU other than corporate bonds," substitute "(24) of Article 2(1) of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, other than corporate bonds";

(ii) after the fourth subparagraph insert—

"In the fourth subparagraph the reference to Regulation (EU) No 575/2013 is a reference to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, as it had effect immediately before exit day.".

(b) in paragraph 21—

(i) in the first subparagraph for the words from "The EBA" to "draft regulatory" substitute "The FCA may make"; and

(ii) omit the second and third subparagraphs.

Article 25 (sponsor of an ABCP programme)

23. In Article 25—

(a) in paragraph 1 for the words "credit institution supervised under Directive 2013/36/EU" substitute "person who is a CRR firm as defined by Article 4(1)(2A) of the Capital Requirements Regulation, but is not an investment firm as defined by Article 4(1)(2) of that Regulation(**15**)"; and

(b) in paragraph (3)—

(i) in the first subparagraph for "its competent authority" substitute "the PRA"; and

(ii) in the second subparagraph for "the competent authority" substitute "the PRA".

Article 27 (STS notification requirements)

24.—(1) Article 27 is amended as follows.

(2) For paragraph 1 substitute—

"**1.** Where a securitisation which is not an ABCP programme or an ABCP transaction meets the requirements of Articles 19 to 22, the originator and sponsor involved in the securitisation must jointly notify the FCA of that fact by means of the template referred to in paragraph 7 of this Article.

Where an ABCP programme meets the requirements of Articles 23 to 26, or an ABCP transaction meets the requirements of Article 24, the sponsor involved in the programme must notify the FCA of that fact by means of the template referred to in paragraph 7 of this Article.

A notice given in accordance with the first or second subparagraph ('STS notification') must include an explanation of how the relevant STS criteria set out in Articles 20 to 22 or, as the case may be, Articles 24 to 26 have been complied with.

The FCA must publish the STS notification on its official website pursuant to paragraph 5. Where the STS notification is given jointly by the originator and sponsor involved in a

(**15**) Point (2A) was inserted and point (2) was amended by S.I. 2018/1401.

securitisation, the STS notification must designate one of them to be the first contact point for investors and the FCA.".

(3) In paragraph 2, in the second subparagraph for ", its place of establishment and the name of the competent authority that authorised it" substitute "and its place of establishment".

(4) In paragraph 3 for "Union" substitute "United Kingdom".

(5) In paragraph 4 for "ESMA and inform their competent authority" substitute "the FCA".

(6) For paragraph 5 substitute—

"**5.** The FCA must maintain on its official website a list of all securitisations notified to it as meeting the requirements of Articles 19 to 22 or Articles 23 to 26. The FCA must add each securitisation so notified to that list immediately and must update the list where a securitisation is no longer considered to be STS following a decision of the FCA or a notification by the originator or sponsor concerned.

Where the PRA or the Pensions Regulator, acting as the competent authority, has imposed a relevant sanction in relation to a securitisation, it must notify the FCA of that fact immediately. Where a competent authority has imposed a relevant sanction in relation to a securitisation, the FCA must immediately indicate that fact in relation to the securitisation concerned on the list which it maintains in accordance with the first subparagraph.

In the second subparagraph 'relevant sanction' means any sanction imposed or other measure taken where by reason of any act or failure, whether intentional or through negligence—

(a) an originator, sponsor or original lender fails to meet the requirements set out in Article 6;

(b) an originator, sponsor or original lender fails to meet the criteria set out in Article 9;

(c) an originator, sponsor or SSPE fails to meet the requirements set out in Article 7 or 18;

(d) a securitisation is designated as STS and an originator, sponsor or SSPE of that securitisation fails to meet the requirements set out in Article 19 to 22 or Articles 23 to 26;

(e) an originator or sponsor makes a notification pursuant to Article 27(1) which is misleading;

(f) an originator or sponsor fails to meet the requirements set out in Article 27(4); or

(g) a third party authorised pursuant to Article 28 fails to notify a material change to the information provided pursuant to Article 28(1), including any change which could reasonably be considered to affect the competent authority's assessment of the third party's competence to assess STS compliance.".

(7) In paragraph 6—

(a) in the first subparagraph for the words from "ESMA" to "draft regulatory" substitute "The FCA may make"; and

(b) omit the second and third subparagraphs.

(8) In paragraph 7—

(a) in the first subparagraph for the words from "ESMA," to "draft implementing" substitute "The FCA may make"; and

(b) omit the second and third subparagraphs.

Article 28 (third party verifying STS compliance)

25. In Article 28—

(a) in paragraph (1)—

(i) for "competent authority", wherever it appears, substitute "FCA";

(ii) in point (b) omit "point (b) of";

(b) in paragraph (2) for "its competent authority", in both places where it appears, substitute "the FCA";

(c) in paragraph (3) for "The competent authority" substitute "The FCA"; and

(d) in paragraph 4—

(i) in the first subparagraph for "ESMA shall develop draft regulatory" substitute "The FCA may make", and for "the competent authorities" substitute "it";

(ii) omit the second and third subparagraphs.

CHAPTER 6

Amendment of Chapter 5 of the Securitisation Regulation (supervision)

Article 29 (designation of competent authorities)

26.—(1) Article 29 is amended as follows.

(2) For paragraphs (1), (2) and (3) substitute—

"**1.** Compliance with the obligations set out in Article 5 of this Regulation is to be supervised as follows—

(a) where the institutional investor is an insurance undertaking or a reinsurance undertaking, by the PRA;

(b) where the institutional investor is an AIFM which markets or manages AIFs in the United Kingdom, by the FCA;

(c) where the institutional investor is a management company or a UCITS which is an authorised open ended investment company as defined in section 237(3) of the 2000 Act, by the FCA;

(d) where the institutional investor is an occupational pension scheme, by the Pensions Regulator;

(e) where the institutional investor is a CRR firm—

(i) by the PRA, if the investor is a PRA-authorised person;

(ii) in any other case by the FCA.

2. Compliance by a sponsor with the obligations set out in Articles 6, 7, 8 and 9 of this Regulation is to be supervised by the PRA, if the sponsor is a PRA-authorised person, and in any other case by the FCA.

3. Paragraph 3A applies where an originator, original lender or SSPE is an insurance undertaking or a reinsurance undertaking, an AIFM, a management company, a UCITS which is an authorised open ended investment company, an institution for occupational retirement provision or a CRR firm.

3A. Where this paragraph applies, compliance with the obligations set out in Articles 6, 7, 8 and 9 of this Regulation is to be supervised as follows—

(a) where the originator, original lender or SSPE is a PRA-authorised person, by the PRA;

(b) where the originator, original lender or SSPE is an institution for occupational retirement provision, by the Pensions Regulator; and

(c) in any other case by the FCA.

3B. In paragraphs (1) to (3A)—

(a) 'AIF' and AIFM' have the meaning given in regulations 3 and 4(1) of the Alternative Investment Fund Managers Regulation 2013(**16**);

(b) 'CRR firm' has the meaning given by Article 4(1)(2A) of Regulation (EU) No 575/2013;

(c) 'occupational pension scheme' has the meaning given in section 1(1) of the Pension Schemes Act 1993;

(d) 'insurance undertaking', 'reinsurance undertaking' and 'PRA-authorised person' have the meaning given in section 417(1) of the 2000 Act;

(e) 'management company' has the meaning given in section 237(2) of the 2000 Act(**17**); and

(f) 'UCITS' has the meaning given in section 236A of the 2000 Act(**18**).".

(3) In paragraph (4)—

(a) in the first sentence for the words from "Union and" to "Member States" substitute "United Kingdom in relation to which paragraph 3A does not apply, the Treasury"; and

(b) omit the second sentence;

(4) In paragraph (5)—

(a) in the first sentence for "Member States" substitute "The Treasury"; and

(b) omit the second sentence.

(5) Omit paragraphs (7) and (8).

Article 30 (powers of the competent authorities)

27. In Article 30—

(a) omit paragraph 1;

(b) in paragraph 2 for "The competent authority" substitute "Competent authorities";

(c) in paragraph 4—

(i) in the first subparagraph for "The competent authority" substitute "Competent authorities";

(ii) for the second subparagraph substitute—

"Where a competent authority identifies a material risk to the financial stability of a financial institution or to the financial system as a whole, it must take action to mitigate those risks and, unless it is the PRA, report its findings to the Bank of England."; and

(d) for paragraph 5 substitute—

(**16**) S.I. 2013/1773, as amended by S.I. 2019/XXX [*the Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019*].

(**17**) The definition was substituted by S.I. 2019/XXX [*the Collective Investment Schemes (Amendment) (EU Exit) Regulations 2019*].

(**18**) Section 236A was inserted by S.I. 2019/XXX [*the Collective Investment Schemes (Amendment) (EU Exit) Regulations 2019*].

"**5.** Competent authorities shall monitor any suspected circumvention of the obligations set out in Article 6(2) and ensure that sanctions are applied for a circumvention.".

Articles 31 to 37

28. Omit the following Articles—

(a) Article 31 (macroprudential oversight of the securitisation market);

(b) Article 32 (administrative sanctions and remedial measures);

(c) Article 33 (exercise of the power to impose administrative sanctions and remedial measures);

(d) Article 34 (criminal sanctions);

(e) Article 35 (notification duties);

(f) Article 36 (cooperation between competent authorities and the ESAs); and

(g) Article 37 (publication of administrative sanctions).

CHAPTER 7

Amendment of Chapter 6 of the Securitisation Regulation (amendments)

Articles 38, 39 and 41

29. Omit Article 38 (amendment to Directive 2009/65/EC), Article 39 (amendment to Directive 2009/138/EC and Article 41 (amendment to Directive 2011/61/EU).

Article 43 (transitional provisions)

30.—(1) Article 43 is amended as follows.

(2) After paragraph 4 insert—

"**4A.** Subject to the second subparagraph, in paragraphs 3 and 4 a reference to a numbered Article is a reference to the Article so numbered of this Regulation as it had effect immediately before exit day, or as it has effect on or after exit day in relation to an EEA State.

In paragraphs 3(b) and 4, in relation to a STS notification made on or after exit day by a person who is established in the United Kingdom, a reference to Article 27(1) is a reference to that Article as it has effect on or after exit day in the United Kingdom.

"STS notification" means notification that a securitisation meets the requirements of Section 1 or Section 2 of Chapter 4.".

(3) In paragraph 5 after the existing text insert the following subparagraph—

"For the purposes of this paragraph, Articles 407 and 410 of Regulation (EU) No 575/2013(**19**) (which set out, in part, requirements for due diligence) have effect with the following modifications—

(a) in Article 407 (additional risk weight) and Article 410 (uniform condition of application) a reference to Article 405 (retained interest of the issuer) is a reference to that Article as modified by regulation 30(3) of the Securitisation (Amendment) (EU Exit) Regulations 2019;

(**19**) Articles 407 and 410, with all other provisions of Part 5 of Regulation (EU) No 575/2013, are repealed by the CRR amending regulation, Article 1(11).

(b) in Article 407, in the first subparagraph ignore the reference to Article 409; and

(c) in Article 410—

(i) ignore paragraph 1;

(ii) in paragraph 2—

(aa) in the first subparagraph read the opening words as if for "EBA shall develop draft regulatory" there were substituted "The FCA and the PRA may each make", and ignore point (d);

(bb) ignore the second and third subparagraphs; and

(iii) in paragraph 3, —

(aa) in the first subparagraph read the opening words as if for "EBA shall develop draft regulatory" there were substituted "The FCA and the PRA may each make";

(bb) ignore the second and third subparagraphs.".

(4) In paragraph 6—

(a) for the words from "credit institutions" to "Directive 2011/61/EU" substitute "a CRR firm (as defined by Article 4(1)(2A) of Regulation (EU) No 575/2013), an insurance undertaking (as defined in section 417(1) of the 2000 Act), a reinsurance undertaking (as defined in that section) and an AIFM (as defined by regulation 4(1) of the Alternative Investment Fund Managers Regulation 2013)"; and

(b) after the existing text insert the following subparagraph—

"For the purposes of this paragraph, Article 405 of Regulation (EU) No 575/2013(**20**) has effect with the following modifications—

(a) read paragraph 2 as if—

(i) for the first subparagraph there were substituted—

"Where—

(a) a mixed financial holding company,

(b) a UK parent institution which is a credit institution,

(c) a financial holding company established in the United Kingdom, or

(d) a subsidiary of such a company or institution,

as an originator or sponsor, securitises exposures from one or more credit institutions, investment firms or other financial institutions which are included in the scope of supervision on a consolidated basis, the requirement set out in paragraph 1 may be satisfied on the basis of the consolidated situation of the mixed financial holding company, UK parent institution or financial holding company concerned.";

(ii) in the second subparagraph for the words from ", in a timely manner" to the end there were substituted "the information needed to satisfy the requirements set out in Article 409, in a timely manner, to the originator or sponsor and, if the originator or sponsor is a subsidiary, to the mixed financial holding company, UK parent institution or financial holding company which is the parent undertaking of the subsidiary"; and

(**20**) Article 405, with all other provisions of Part 5 of Regulation (EU) No 575/2013, is repealed by the CRR amending regulation, Article 1(11).

(iii) after the second subparagraph there were inserted—

"In this paragraph—

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

(b) 'mixed financial holding company" has the meaning given in regulation 1(2) of the Financial Conglomerates and Other Financial Groups Regulations 2004(**21**).''; and

(b) in paragraph 3, in point (b) ignore "of Member States".".

(5) In paragraph 7 for the words from "regulatory" to "apply" substitute "FCA and the PRA, acting jointly, have made technical standards pursuant to Article 6(7) of this Regulation".

(6) In paragraph 8 for the words from "regulatory" to "apply" substitute "FCA and the PRA, acting jointly, have made technical standards pursuant to Article 6(7) of this Regulation".

Articles 44 and 45

31. Omit Article 44 (reports) and Article 45 (synthetic securitisations).

Article 46 (review)

32. In Article 46—

(a) for the first paragraph substitute—

"**1.** The Treasury must, no later than 1st January 2022, review the functioning of this Regulation and lay a report before Parliament.

The Treasury must review the functioning of this Regulation if, at any time before that date, the Treasury consider that progress has been made in third countries other than the EEA States with respect to the implementation of international standards on simple, transparent and comparable securitisation.

Where the Treasury review the functioning of this Regulation in response to such progress, the Treasury must lay a report before Parliament.";

(b) the existing text of the second paragraph becomes paragraph 2; and

(c) in that paragraph, in the opening words, omit "consider in particular the findings of the reports referred to in Article 44, and".

Article 47 (exercise of the delegation)

33. Omit Article 47.

Final provision

34. After Article 48 (entry into force) omit "This Regulation shall be binding in its entirety and directly applicable in all Member States.".

(**21**) S.I. 2004/1862, as amended by 2019/XXX [*the Financial Conglomerates and other Financial Groups (Amendment) (EU Exit) Regulations 2019*].

PART 3

Amendment of the CRA Regulation

Article 3 (definitions)

35. In Article 3 of the CRA Regulation, in paragraph 1 for the definition of 'structured finance instrument'(**22**) substitute—

> "'securitisation instrument' means a financial instrument or other assets resulting from a securitisation transaction or scheme whereby the credit risk associated with an exposure or pool of exposures is tranched, having the following characteristics:
>
> (i) payments in the transaction or scheme are dependent upon the performance of the exposure or pool of exposures;
>
> (ii) the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme; and
>
> (iii) the transaction or scheme does not create exposures which possess all of the characteristics listed in Article 147(8) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012;".

PART 4

Amendment of the EMIR Regulation

Article 2 (definitions)

36. In Article 2 of the EMIR Regulation, in point (30) (definition of "covered bond") for "Regulation (EU) No 575/2013" substitute "the Capital Requirements Regulation"(**23**).

Article 4 (clearing obligation)

37. In Article 4 of the EMIR Regulation—

(a) after paragraph 5 insert—

> "**5A.** In paragraph 5—
>
> (a) the reference to a securitisation includes a reference to a securitisation notified as STS in accordance with Article 27 of the Securitisation Regulation before exit day, or before the expiry of a period of two years beginning with exit day, where the person responsible for the notification (the originator and sponsor or, in the case of an ABCP programme, the sponsor) is established in an EEA State; and
>
> (b) in relation to any securitisation so notified a reference to a numbered Article of the Securitisation Regulation is a reference to the Article so numbered of that Regulation as it had or has effect in relation to an EEA State at any time on and after the date of the notification and before the end of the period referred to in point (a).

(**22**) This definition was substituted, with the rest of Article 3(1), by S.I. 2019/XXX [*the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019*].
(**23**) Point (30) was inserted by the Securitisation Regulation, Article 42(1).

In the first subparagraph 'the Securitisation Regulation' means Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation.

In paragraph 6 the reference to paragraph 5 is a reference to paragraph 5 without the modification made by this paragraph."; and

(b) in paragraph 6(**24**)—

(i) in the first subparagraph for "ESA's shall develop draft regulatory" substitute "FCA may make";

(ii) omit the second and third subparagraphs.

Article 11 (risk-mitigation techniques for OTC derivative contracts not cleared by a CCP)

38. In Article 11 of the EMIR Regulation, after paragraph 15(**25**) insert—

"**15A.** For the purposes of making technical standards under paragraph 15 the level and type of collateral required with respect to an OTC derivative contract which—

(a) is concluded by a covered bond entity in connection with a covered bond(**26**) or by a securitisation special purpose entity (within the meaning given in Article 2(2) of the Securitisation Regulation) in connection with a securitisation (within the meaning of Article 2(1) of that Regulation), and

(b) meets the conditions of Article 4(5) of this Regulation and the requirements set out in Article 18 and in Articles 19 to 22 or 23 to 26 of the Securitisation Regulation,

are to be determined taking into account any impediments faced in exchanging collateral with respect to existing collateral arrangements under the covered bond or the securitisation.

In the first subparagraph 'the Securitisation Regulation' means Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation.".

PART 5

Amendment of the Capital Requirements Regulation

CHAPTER 1

Introductory provision

Amendments

39. The Capital Requirements Regulation is amended in accordance with this Part.

(**24**) Paragraph 6 was inserted by the Securitisation Regulation, Article 42(2).
(**25**) Paragraph 15 was substituted by S.I. 2019/XXX [*the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019*].
(**26**) The definitions of "covered bond" and "covered bond entity" are inserted by the Securitisation Regulation, Article 42.

CHAPTER 2

Amendment of Chapter 5 of Title 2 of Part 3 of the Capital Requirements Regulation

Chapter 5 (securitisation)

40. Chapter 5 of Title 2 of Part 3 of the Capital Requirements Regulation(**27**) (securitisation) is amended in accordance with this Chapter.

References to the competent authorities

41. In the following provisions for "competent authorities" or "the competent authorities", in each place where these words appear, substitute "the competent authority"—

(a) in Article 244 (traditional securitisation), in paragraph 2, the second subparagraph;

(b) paragraph 3 of that Article;

(c) in Article 245 (synthetic securitisation), in paragraph 2, the second subparagraph;

(d) paragraph 3 of that Article;

(e) in Article 248 (exposure value), paragraph 3;

(f) in Article 254 (hierarchy of methods), paragraph 4;

(g) in Article 258 (conditions for the use of the Internal Ratings Based Approach), paragraph 2;

(h) in Article 265 (scope and operational requirements for the Internal Assessment Approach), paragraph 2;

(i) in Article 270a (additional risk weight), paragraph 1.

Article 242 (definitions for Chapter 5)

42. In Article 242 for point (19) substitute—

"(19) "promotional entity" means any undertaking or entity—

(a) which is established by a government department or devolved administration or by a local authority in any part of the United Kingdom ("the establishing body");

(b) which grants promotional loans or guarantees;

(c) whose primary goal is not to make profit or maximise market share, but is to promote public policy objectives of the establishing body; and

(d) in relation to which, subject to any applicable rules relating to State aid (as defined in the law of the United Kingdom after exit day)—

(i) the establishing body is obliged to protect its economic basis and maintain its viability throughout its lifetime; or

(ii) at least 90% of its original capital or funding or the promotional loan it grants is directly or indirectly guaranteed by a government department, a devolved administration or a local authority in any part of the United Kingdom.".

(**27**) Chapter 5 was substituted by point (9) of Article 1 of Regulation (EU) 2017/2401 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms.

Article 244

43. In Article 244 omit paragraphs (5) and (6).

Article 245

44. In Article 245 omit paragraphs (5) and (6).

Article 248

45. In Article 248, in paragraph 1—

(a) in the second subparagraph for "EBA shall develop draft regulatory" substitute "FCA and the PRA may each make"; and

(b) omit the third and fourth subparagraphs.

Article 250 (implicit support)

46. In Article 250, omit paragraph 4.

Article 254

47. In Article 254—

(a) in paragraph 3, for the first and second subparagraphs substitute—

"The third and fourth subparagraphs apply where, on or before 17 November 2018, an institution notified the competent authority of a relevant decision.

"A relevant decision" is a decision made under the first subparagraph, as it had effect on 17 November 2018 by virtue of the first subparagraph of Article 3 (entry into force), to apply the SEC-ERBA instead of the SEC-SA to all its rated securitisation positions or positions in respect of which an inferred rating may be used.".

(b) omit paragraph 8.

Article 255 (determination of K_{IRB} and K_{SA})

48.—(1) Article 255 is amended as follows.

(2) Omit paragraph 8.

(3) In paragraph 9—

(a) in the first subparagraph for "EBA shall develop draft regulatory" substitute "FCA and the PRA may each make"; and

(b) omit the second and third subparagraphs.

Article 257 (determination of tranche maturity (M_T))

49. In article 257 omit paragraph 4.

Article 270 (senior positions in SME securitisations)

50. In Article 270—

(a) in point (a) for "Article" substitute "Articles 18 and";

(b) after point (a) insert—

"(aa) the originator, sponsor and SSPE must be established in the United Kingdom;"; and

(c) in point (e)(i) for "a Member State" substitute "the United Kingdom".

Article 270a

51. In Article 270a, in paragraph 2—

(a) in the first subparagraph for "EBA shall develop draft implementing" substitute "FCA and the PRA may each make", and omit the second sentence; and

(b) omit the second subparagraph.

Article 270e (securitisation mapping)

52. In Article 270e—

(a) in the first subparagraph for "EBA shall develop draft implementing" substitute "FCA and the PRA may each make", and for "EBA", in the second place where it appears, substitute "the FCA or, as the case may be, the PRA"; and

(b) omit the second and third subparagraphs.

CHAPTER 3

Amendment of other Articles of the Capital Requirements Regulation

Article 337 (own funds requirement for securitisation instruments)

53. In Article 337(**28**), in paragraph 2, omit the second subparagraph.

Article 519a (reporting and review)

54. Omit Article 519a(**29**).

PART 6

Amendment of the Liquidity Commission Delegated Regulation

Article 13 of the Liquidity Commission Delegated Regulation (level 2B securitisations)

55.—(1) Article 13 of the Liquidity Commission Delegated Regulation is amended as follows.

(2) In paragraph 2, in point (g)—

(a) in the opening words for "points (i) and (ii)" substitute "point (i);

(b) in point (i) for the words from "the national law" to "EBA" substitute "the loans were originated in the United Kingdom and the law of the United Kingdom provides for a loan-to-income limit on the amount that an obligor may borrow in a residential loan";

(c) omit point (ii);

(d) in point (iii) for "a Member State" substitute "the United Kingdom";

(**28**) Article 237 is substituted by point (10) of Article 1 of Regulation (EU) 2017/2401 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms.

(**29**) Article 519a is substituted by point (14) of Article 1 of that Regulation.

(e) in point (iv)—

(i) for "a Member State" substitute "the United Kingdom";

(ii) for the words from "agricultural" to "tracked" substitute "tractors as defined in point (8) of Article 3 of Regulation (EU) No 167/2013 of the European Parliament and of the Council (as it had effect immediately before exit day), powered two-wheelers or powered tricycles as defined in points (68) and (69) of Article 3 of Regulation (EU) No 168/2013 of the European Parliament and of the Council (as it had effect immediately before exit day) or tracked"; and

(f) in point (v) for "a Member State" substitute "the United Kingdom".

(3) In paragraph 6 for "points (g)(i) and (ii)" substitute "point (g)(i)".

(4) In paragraph 7 for "points (g)(i) and (ii)" substitute "point (g)(i)".

(5) In paragraph 9 for "Union" substitute "United Kingdom".

(6) In paragraph 13 at the end insert ", as that Directive has effect immediately before exit day, provided that for the purposes of this paragraph the reference in point 4 of Annex 1 to that Directive to point (3) of Article 4 of Directive (EU) 2015/2366 is to be read as a reference to regulation 2 of the Payment Services Regulations 2017(**30**)".

(7) In paragraph 14, in point (a) for "(g)(i), (ii)" substitute "(g)(i) and".

PART 7

Amendment of the CRR amending regulation

56. Article 2 of the CRR amending regulation (transitional provisions concerning outstanding securitisation positions) is amended as follows—

(a) the existing text becomes paragraph 1; and

(b) after paragraph 1 insert—

"**2.** For the purposes of paragraph 1, Chapter 5 of Title 2 of Part 3 and Article 337 of Regulation (EU) No 575/2013 (in the version applicable on 31 December 2018) have effect with the following modifications—

(a) ignore the following provisions (obligations of the EBA)—

(i) in Article 243 (traditional securitisation), paragraph 6;

(ii) in Article 244 (synthetic securitisation), paragraph 6;

(iii) in Article 248 (implicit support), paragraph 2;

(iv) in Article 262 (supervisory formula method), paragraph 3;

(b) a reference to the competent authority or to competent authorities is a reference to the competent authority as defined in point (40) of Article 4(1) of Regulation (EU) No 575/2013(**31**);

(c) a reference to Chapter 2 (standardised approach) is a reference to that Chapter as amended by regulations 111 to 127 of the Capital Requirements (Amendment) (EU Exit) Regulations 2018 ("the 2018 Regulations");

(d) a reference to Chapter 3 (internal ratings based approach) is a reference to that Chapter as amended by regulations 128 to 134 of the 2018 Regulations;

(**30**) S.I. 2017/752.
(**31**) Point (40) is amended by S.I. 2018/1401.

(e) a reference to Chapter 4 (credit risk mitigation) is a reference to that Chapter as amended by regulations 135 to 144 of the 2018 Regulations;

(f) a reference to Chapter 6 (counterparty credit risk) is a reference to that Chapter as amended by regulations 145 to 151 of the 2018 Regulations;

(g) in Article 245 (calculation of risk-weighted exposure amounts), in paragraph (6) the reference to Article 407 is a reference to that Article as modified by regulation 30(1) and (2) of the Securitisation (Amendment) (EU Exit) Regulations 2019;

(h) in Article 246 (exposure value), in paragraph (1)(e) the reference to Annex II is a reference to that Annex as amended by regulation 218 of the 2018 Regulations;

(i) in Article 252 (originator and sponsor institutions), in the first subparagraph, in point (b) a reference to Article 128 is a reference to that Article as amended by regulation 122 of the 2018 Regulations;

(j) in Article 262, in paragraph (1), in each place where it appears, a reference to Annex II is a reference to that Annex as amended by regulation 218 of the 2018 Regulations;

(k) in Article 270 (mapping)—

(i) in the first subparagraph a reference to EBA is a reference to the Prudential Regulation Authority;

(ii) ignore the second and third subparagraphs; and

(l) in Article 337 (own funds requirement for securitisation instruments)—

(i) in paragraph 1 each reference to Title II, Chapter 5, Section 3 is a reference to Articles 245 to 266 as amended by regulations 44 to 49 of the Securitisation (Amendment) (EU Exit) Regulations 2019;

(ii) in paragraph 2—

(aa) in the first subparagraph the reference to Article 262 is a reference to that Article as modified by points (a)(iv) and (e);

(bb) in the first and the third subparagraphs each reference to Title II, Chapter 3 is a reference to Articles 142 to 191 as amended by regulations 128 to 134 of the 2018 Regulations;

(cc) ignore the fourth subparagraph;

(iii) in paragraph 3 the reference to Article 407 is a reference to that Article as modified by regulation 30(1) and (2) of the Securitisation (Amendment) (EU Exit) Regulations 2019;

(iv) ignore paragraph 4;

(v) in paragraph 5—

(aa) in the first subparagraph the reference to Article 243 is a reference to that Article as modified by point (a)(i);

(bb) in the second subparagraph the reference to Article 244 is a reference to that Article as modified by point (a)(ii).

3. For the purposes of paragraph 2, Chapters 2, 3, 4 and 6 of Regulation (EU) No 575/2013 (in the version applicable on 31 December 2018) have effect with the following modifications—

(a) a reference to Annex II of that Regulation is a reference to that Annex as amended by regulation 218 of the 2018 Regulations; and

(b) a reference to any other provision of that Regulation which has been amended by the 2018 Regulations is a reference to that provision as so amended.".

PART 8

Amendment of subordinate legislation

The Financial Services and Markets Act (Regulated Activities) Order 2001

57. In article 3 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**32**) (interpretation), in the definition of "securitisation repository"(**33**), in paragraph (c) for "ESMA" substitute "FCA (as the competent authority)".

Amendment of the Securitisation Regulations 2018

58.—(1) The Securitisation Regulations 2018(**34**) are amended as follows.

(2) In regulation 3 (EU regulations)—

(a) for the heading substitute "References to technical standards"; and

(b) for "directly applicable EU regulation made under that Article" substitute "technical standards originally made or adopted under that Article which are retained direct EU legislation and any technical standards made under that Article on or after exit day".

(3) In regulation 4 (designation of competent authorities)—

(a) in paragraph (1)(c), for "and not covered by the European Union legislative acts referred to in paragraph 3 of Article 29 of the EU Securitisation Regulation 2017" substitute ", other than originators, original lenders and SSPEs to which Article 29(3A) of the EU Securitisation Regulation 2017(**35**) applies,"; and

(b) in paragraph (2), for "and not covered by the European Union legislative acts referred to in Article 29(3) of the EU Securitisation Regulation 2017" substitute ", other than originators, original lenders and SSPEs to which Article 29(3A) of the EU Securitisation Regulation 2017 applies,".

(4) In regulation 9 (statements of policy) for paragraph (2) substitute—

"(2) The policy must require the appropriate regulator, in determining the amount of a penalty to be imposed on any person, to take account of all relevant circumstances including, where appropriate—

(a) the impact, gravity and duration of the contravention for which the penalty is to be imposed;

(b) the extent of the person's responsibility for the contravention;

(c) the financial position of the person;

(d) the amount of profit gained or of loss avoided as a result of the contravention, so far as this can be determined;

(e) the amount of loss sustained as a result of the contravention by any other person, so far as this can be determined;

(**32**) S.I. 2001/544.
(**33**) The definition was inserted by S.I. 2018/1288.
(**34**) S.I. 2018/1288.
(**35**) Paragraph (3A) of Article 29 is substituted by regulation 28 of these Regulations.

(f) the level of co-operation by the person with the appropriate regulator (without prejudice to the need to ensure that the person accounts for or makes good any profit gained or loss avoided as a result of the contravention);

(g) any previous contravention by the person for which a penalty was, or could have been, imposed under regulation 8.".

(5) In regulation 25 (transparency requirements for originators, sponsors and SSPEs of private securitisations – power of direction), in paragraph (2) for the words from "where no prospectus has to be drawn up" to the end substitute "for which section 85 of the Act (prohibition of dealing etc in transferable securities without approved prospectus) and rules made by the FCA for the purposes of Part 6 of the Act (official listing) do not require an approved prospectus to be drawn up".

(6) In regulation 29 (review) omit paragraph (4).

(7) In Schedule 2 (minor and consequential amendments to primary and secondary legislation) omit paragraph 1.

Name
Name
Two of the Lords Commissioners of Her Majesty's Treasury

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in sections 8(1) and 23(1) and (2) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

These Regulations make provision under the European Union (Withdrawal) Act 2018 to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union (in particular, deficiencies of the kinds mentioned in paragraphs (a), (b), (f) and (g) of section 8(2)).

Part 2 amends Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation ("the Securitisation Regulation"). The Securitisation Regulation harmonises and reforms existing rules on due diligence, risk retention, disclosure and credit-granting which will apply in a uniform way to all securitisations, securitising entities and all types of EU regulated institutional investors, and creates a new framework for simple, transparent and standardised long-term securitisations and asset-backed commercial paper programmes.

Part 3 amends Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies. It substitutes a definition of 'securitisation instrument' for the definition of 'structured finance instrument'.

Part 4 amends Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

Part 5 amends Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 ("the Capital Requirements Regulation"). Chapter 2 of Part 5 amends provision about securitisation made in Chapter 5 of Title 2 of Part 3 of that Regulation.

Part 6 amends Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and Council with regard to liquidity coverage requirement for Credit Institutions.

Part 7 amends Regulation (EU) 2017/2401 of the European Parliament and of the Council of 12 December 2017, which amends the Capital Requirements Regulation. Article 2 makes transitional provision with reference to provisions of the Capital Requirements Regulation in the version applicable on 31 December 2018. Article 2 is amended so that those provisions have effect with appropriate modifications.

Part 8 amends subordinate legislation. Regulation 58 amends the Securitisation Regulations 2018 (S.I. 2018/1288), which make provision in relation to the Securitisation Regulation. The amendments, apart from the amendment in paragraph (6), are made in consequence of Part 2 of these Regulations.

These Regulations refer to the sourcebooks made by the Financial Conduct Authority under the Financial Services and Markets Act 2000 (c.8). Sourcebooks made by the Financial Conduct Authority are available on https://www.handbook.fca.org.uk/handbook and copies of the rules referred to can be obtained from the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN, where it is also available for inspection.

An impact assessment of the effect that this instrument, and other instruments made by HM Treasury under the European Union (Withdrawal) Act 2018 at or about the same time, will have on the costs of business, the voluntary sector and the public sector is available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is published alongside this instrument at www.legislation.gov.uk.