
STATUTORY INSTRUMENTS

2024 No. 102

The Securitisation Regulations 2024

PART 2

Designated activities

Activities specified as designated activities for purposes of FSMA 2000

4.—(1) The following activities are specified under section 71K of FSMA 2000⁽¹⁾ as designated activities for the purposes of that Act, where those activities are carried out by a person that is established in the United Kingdom—

- (a) acting as one of the following in a securitisation—
 - (i) an originator,
 - (ii) a sponsor,
 - (iii) an original lender, or
 - (iv) a securitisation special purpose entity;
 - (b) selling a securitisation position to a retail client located in the United Kingdom.
- (2) In this regulation “retail client” has the meaning given in rules made by the FCA.

FCA rules

5.—(1) The FCA may make designated activity rules relating to the activities specified in regulation 4.

(2) Rules made by virtue of paragraph (1) may not impose requirements on a PRA-authorised person with respect to—

- (a) due diligence in relation to any securitisation, including monitoring, stress-testing and risk management,
- (b) the retention of any interest or risk in any securitisation or the selection of the assets for the securitisation,
- (c) the provision of information in relation to any securitisation,
- (d) the inclusion of securitisation positions in the underlying exposures that may be used in a securitisation, or
- (e) arrangements concerning the granting of credit applying to exposures to be securitised, or verification of the making of such arrangements where the originator purchases exposures from a third party on its own account.

(3) Paragraph (2) does not apply to the imposition of requirements with respect to STS criteria or STS notifications.

(4) The FCA must consult the PRA before making rules by virtue of paragraph (1) imposing a requirement on a PRA-authorized person.

(5) The FCA may by notice suspend any rules made by virtue of paragraph (1) for such period as it considers appropriate (and see section 71N(6)(2) which imposes a duty to consult the PRA beforehand).

(6) Rules made by virtue of paragraph (1) may include provision—

- (a) enabling requirements imposed by the rules to be dispensed with, modified, or reimposed (with or without modification) in such cases or circumstances as may be determined by the FCA under the rules;
- (b) enabling publication of any decision made under sub-paragraph (a) in the way appearing to the FCA to be best calculated to bring it to the attention of persons likely to be affected by it.

Power of FCA to give directions

6.—(1) The FCA may give directions under section 71O of FSMA 2000⁽³⁾ imposing on a person or a description of persons such requirements as the FCA considers appropriate in relation to the carrying on of an activity specified in regulation 4.

(2) In the following provisions of this regulation “a direction” means a direction given under section 71O of FSMA 2000 by virtue of paragraph (1).

(3) The FCA may give a direction only if it appears to the FCA—

- (a) in the case of a direction given to a person, that in carrying on the activity the person is failing, or is likely to fail, to comply with a requirement imposed—
 - (i) by designated activity rules made by virtue of regulation 5, or
 - (ii) by Part 4 (simple, transparent and standardised securitisations), or
- (b) in the case of a direction given to a person or a description of persons, that it is desirable to exercise the power—
 - (i) in order to reduce risks, including reputational risks, arising from participation in securitisations or investment in securitisations, or
 - (ii) in order to advance any of the FCA’s operational objectives set out in section 1B(3) of FSMA 2000⁽⁴⁾.

(4) Subject to paragraph (5), the power to give a direction includes (among other things) power—

- (a) to prohibit a person from selling a securitisation position to retail clients;
- (b) to impose requirements with respect to—
 - (i) due diligence in relation to any securitisation, including monitoring, stress-testing and risk management,
 - (ii) the retention of any interest or risk in any securitisation or the selection of the assets for the securitisation,
 - (iii) the provision of information in relation to any securitisation,
 - (iv) the inclusion of securitisation positions in the underlying exposures that may be used in a securitisation, or

(2) Inserted by section 8(2) of the Financial Services and Markets Act 2023.

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(4) Section 1B was inserted by section 6(1) of the Financial Services Act 2012.

(v) arrangements concerning the granting of credit applying to exposures to be securitised, or verification of the making of such arrangements where the originator purchases exposures from a third party on its own account.

(5) A direction may not impose requirements on a PRA-authorized person with respect to any of the matters mentioned in paragraph (4)(b).

(6) Paragraph (5) does not apply to the imposition of requirements with respect to STS criteria or STS notifications.

(7) Before giving, varying or revoking a direction where the exercise of the power relates to a PRA-authorized person, the FCA must consult the PRA.

Directions: procedure

7.—(1) This regulation applies to an exercise by the FCA of the power to give a direction under section 71O of FSMA 2000(5) by virtue of regulation 6 unless—

- (a) the direction is given to a description of persons, and
- (b) the FCA considers it appropriate to publish the direction under subsection (9) of section 71O instead of proceeding under subsection (8) of that section.

(2) If the FCA proposes to give a direction, or gives a direction with immediate effect, the FCA must give written notice to the person concerned (“P”).

(3) A direction takes effect—

- (a) immediately, if the notice under paragraph (2) states that this is the case,
- (b) on such other date as may be specified in the 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.

(4) A direction 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 giving the direction, reasonably considers that it is necessary for the direction to take effect immediately, or on that date.

(5) The notice under paragraph (2) must—

- (a) give details of the direction,
- (b) state the FCA’s reasons for the direction and for its determination as to when the direction takes effect,
- (c) inform P that P may make representations to the FCA within such period as may be specified in the notice (whether or not P has referred the matter to the Tribunal), and
- (d) inform P of P’s right to refer the matter to the Tribunal.

(6) The FCA may extend the period allowed under the notice for making representations.

(7) If, having considered any representations made by P, the FCA decides—

- (a) to give the direction proposed, or
- (b) if the direction has been given, not to revoke the direction,

it must give P written notice.

(8) If, having considered any representations made by P, the FCA decides—

- (a) not to give the direction proposed,
- (b) to give a different direction, or

(c) to revoke a direction which has effect,
it must give P written notice.

(9) A notice under paragraph (7) must inform P of P's right to refer the matter to the Tribunal.

(10) A notice under paragraph (8)(b) must comply with paragraph (5).

(11) If a notice informs P of P's right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(12) For the purposes of paragraph (3)(c), whether a matter is open to review is to be determined in accordance with section 391(8) of FSMA 2000.

(13) A person who is aggrieved by the exercise of the FCA of its powers in relation to a direction relating to the person may refer the matter to the Tribunal.