

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

CHAPTER 2

PROVISIONS APPLICABLE TO ALL SECURITISATIONS

Article 6

Risk retention

1 The originator, sponsor or original lender of a securitisation shall retain on an ongoing basis a material net economic interest in the securitisation of not less than 5 %. That interest shall be measured at the origination and shall be determined by the notional value for off-balance-sheet items. Where the originator, sponsor or original lender have not agreed between them who will retain the material net economic interest, the originator shall retain the material net economic interest. There shall be no multiple applications of the retention requirements for any given securitisation. The material net economic interest shall not be split amongst different types of retainers and not be subject to any credit-risk mitigation or hedging.

For the purposes of this Article, an entity shall not be considered to be an originator where the entity has been established or operates for the sole purpose of securitising exposures.

2 Originators shall not select assets to be transferred to the SSPE with the aim of rendering losses on the assets transferred to the SSPE, measured over the life of the transaction, or over a maximum of 4 years where the life of the transaction is longer than four years, higher than the losses over the same period on comparable assets held on the balance sheet of the originator. Where the competent authority finds evidence suggesting contravention of that prohibition, the competent authority shall investigate the performance of assets transferred to the SSPE and comparable assets held on the balance sheet of the originator. If the performance of the transferred assets is significantly lower than that of the comparable assets held on the balance sheet of the originator as a consequence of the intent of the originator, the competent authority shall impose a sanction [^{F1}for the contravention].

3 Only the following shall qualify as a retention of a material net economic interest of not less than 5 % within the meaning of paragraph 1:

- a the retention of not less than 5 % of the nominal value of each of the tranches sold or transferred to investors;
- b in the case of revolving securitisations or securitisations of revolving exposures, the retention of the originator's interest of not less than 5 % of the nominal value of each of the securitised exposures;
- c the retention of randomly selected exposures, equivalent to not less than 5 % of the nominal value of the securitised exposures, where such non-securitised exposures would otherwise have been securitised in the securitisation, provided that the number of potentially securitised exposures is not less than 100 at origination;

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- d the retention of the first loss tranche and, where such retention does not amount to 5 % of the nominal value of the securitised exposures, if necessary, other tranches having the same or a more severe risk profile than those transferred or sold to investors and not maturing any earlier than those transferred or sold to investors, so that the retention equals in total not less than 5 % of the nominal value of the securitised exposures; or
- e the retention of a first loss exposure of not less than 5 % of every securitised exposure in the securitisation.

[^{F2}4 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.]

[^{F3}Subject to the modifications for FCA investment firms in the third subparagraph, the first subparagraph applies] only where credit institutions, investment firms or financial institutions which created the securitised exposures comply with the requirements set out in Article 79 of Directive 2013/36/EU of the European Parliament and of the Council⁽¹⁾ and deliver the information needed to satisfy the requirements provided for in Article 5 of this Regulation, in a timely manner, to the originator or sponsor [^{F4}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].

[^{F5}In this paragraph—

- a ‘credit institution’ [^{F6}, ‘FCA investment firm’], ‘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.]

[^{F7}In the case of FCA investment firms, compliance with the requirements set out in Article 79(b) of [Directive 2013/36/EU](#) of the European Parliament and of the Council are modified in accordance with this subparagraph—

- a FCA investment firms must have internal methodologies that enable them to assess the credit risk of exposures to individual obligors, securities or securitisation positions and credit risk at the portfolio level;
- b the internal methodologies must not rely solely or mechanistically on external credit ratings; and
- c where an FCA investment firm determines the amount of own funds that it should hold by reference to a rating by an external credit assessment institution or by reference to the fact that an exposure is unrated, this does not exempt the FCA investment firm from additionally considering other relevant information for assessing its allocation of internal capital.]

5 Paragraph 1 shall not apply where the securitised exposures are exposures on or exposures fully, unconditionally and irrevocably guaranteed by:

- a central governments or central banks;

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- b regional governments, local authorities and public sector entities within the meaning of point (8) of Article 4(1) of Regulation (EU) No 575/2013 ^{F8}...;
- c institutions to which a 50 % risk weight or less is assigned under Part Three, Title II, Chapter 2 of Regulation (EU) No 575/2013 [^{F9}and Articles 132a to 132c of Chapter 3 of the Standardised Approach and Internal Ratings Based Approach to Credit Risk (CRR) Part of the PRA Rulebook];
- d national promotional banks or institutions within the meaning of point (3) of Article 2 of Regulation (EU) 2015/1017 of the European Parliament and of the Council⁽²⁾; or
- e the multilateral development banks listed in Article 117 of Regulation (EU) No 575/2013.

[^{F10}In this paragraph ‘PRA Rulebook’ means the rulebook published by the PRA containing rules made by that Authority under the 2000 Act as that rulebook has effect on 1 January 2022.]

6 Paragraph 1 shall not apply to transactions based on a clear, transparent and accessible index, where the underlying reference entities are identical to those that make up an index of entities that is widely traded, or are other tradable securities other than securitisation positions.

7 [^{F11}The FCA and the PRA, acting jointly, may make] technical standards to specify in greater detail the risk-retention requirement, in particular with regard to:

- a the modalities for retaining risk pursuant to paragraph 3, including the fulfilment through a synthetic or contingent form of retention;
- b the measurement of the level of retention referred to in paragraph 1;
- c the prohibition of hedging or selling the retained interest;
- d the conditions for retention on a consolidated basis in accordance with paragraph 4;
- e the conditions for exempting transactions based on a clear, transparent and accessible index referred to in paragraph 6;

F12 ...

Textual Amendments

- F1** Words in Art. 6(2) substituted (31.12.2020) by The Securitisation (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/660), regs. 1(2), **8(2)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F2** Words in Art. 6(4) substituted (31.12.2020) by The Securitisation (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/660), regs. 1(2), **8(3)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F3** Words in Art. 6(4) substituted (1.1.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **30(3)(a)(i)** (with regs. 35, 38)
- F4** Words in Art. 6(4) substituted (31.12.2020) by The Securitisation (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/660), regs. 1(2), **8(3)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F5** Words in Art. 6(4) inserted (31.12.2020) by The Securitisation (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/660), regs. 1(2), **8(3)(c)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F6** Words in Art. 6(4) inserted (1.1.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **30(3)(a)(iii)** (with regs. 35, 38)

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- F7** Words in Art. 6(4) inserted (1.1.2022) by [The Financial Services Act 2021 \(Prudential Regulation of Credit Institutions and Investment Firms\) \(Consequential Amendments and Miscellaneous Provisions\) Regulations 2021 \(S.I. 2021/1376\)](#), regs. 1(3), **30(3)(a)(ii)** (with regs. 35, 38)
- F8** Words in Art. 6(5)(b) omitted (31.12.2020) by virtue of [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/660\)](#), regs. 1(2), **8(4)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F9** Words in Art. 6(5)(c) inserted (1.1.2022) by [The Financial Services Act 2021 \(Prudential Regulation of Credit Institutions and Investment Firms\) \(Consequential Amendments and Miscellaneous Provisions\) Regulations 2021 \(S.I. 2021/1376\)](#), regs. 1(3), **30(3)(b)(i)** (with regs. 35, 38)
- F10** Words in Art. 6(5) inserted (1.1.2022) by [The Financial Services Act 2021 \(Prudential Regulation of Credit Institutions and Investment Firms\) \(Consequential Amendments and Miscellaneous Provisions\) Regulations 2021 \(S.I. 2021/1376\)](#), regs. 1(3), **30(3)(b)(ii)** (with regs. 35, 38)
- F11** Words in Art. 6(7) substituted (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/660\)](#), regs. 1(2), **8(5)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F12** Words in Art. 6(7) omitted (31.12.2020) by virtue of [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/660\)](#), regs. 1(2), **8(5)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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- (1) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC ([OJ L 176, 27.6.2013, p. 338](#)).
- (2) Regulation (EU) 2015/1017 of the European Parliament and of the Council of 25 June 2015 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal and amending Regulations (EU) No 1291/2013 and (EU) No 1316/2013 — the European Fund for Strategic Investments ([OJ L 169, 1.7.2015, p. 1](#)).

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Changes and effects yet to be applied to :

- Regulation revoked by [2023 c. 29 Sch. 1 Pt. 1](#)