

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 4

SIMPLE, TRANSPARENT AND STANDARDISED SECURITISATION

Article 18

Use of the designation ‘simple, transparent and standardised securitisation’

[^{F1}] Originators, sponsors and SSPEs may use the designation ‘STS’ or ‘simple, transparent and standardised’, or a designation that refers directly or indirectly to those terms for their securitisation, only where:

- (a) the securitisation meets all the requirements of Section 1 or Section 2 of this Chapter, and [^{F2}the FCA] has been notified pursuant to Article 27(1); and
- (b) the securitisation is included in the list referred to in Article 27(5).

[^{F3} 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.]

3 [^{F4}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 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 IP completion day, or is notified pursuant to Article 27(1) after IP completion day but before the expiry of a period of two years beginning with IP completion 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.]

Textual Amendments

- F1** Words in [Art. 18](#) renumbered as Art. 18(1) (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/660), [regs. 1\(2\)](#), [18\(a\)](#) (with savings in [S.I. 2019/680](#), [reg. 11](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F2** Words in [Art. 18\(1\)\(a\)](#) substituted (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/660), [regs. 1\(2\)](#), [18\(b\)](#) (with savings in [S.I. 2019/680](#), [reg. 11](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

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Changes to legislation: There are outstanding changes not yet made to Regulation (EU) 2017/2402 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

- F3** Art. 18(2) substituted for words (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/660\)](#), regs. 1(2), **18(c)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F4** Art. 18(3) inserted (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/660\)](#), regs. 1(2), **18(d)** (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 35(c)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**

SECTION 1

Requirements for simple, transparent and standardised non-ABCP securitisation

Article 19

Simple, transparent and standardised securitisation

1 Securitisations, except for ABCP programmes and ABCP transactions, that meet the requirements set out in Articles 20, 21 and 22 shall be considered STS.

^{F5}2

- Textual Amendments**
- F5** Art. 19(2) omitted (31.12.2020) by virtue of [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/660\)](#), regs. 1(2), **19** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 20

Requirements relating to simplicity

1 The title to the underlying exposures shall be acquired by the SSPE by means of a true sale or assignment or transfer with the same legal effect in a manner that is enforceable against the seller or any other third party. The transfer of the title to the SSPE shall not be subject to severe clawback provisions in the event of the seller’s insolvency.

2 For the purpose of paragraph 1, any of the following shall constitute severe clawback provisions:

- a provisions which allow the liquidator of the seller to invalidate the sale of the underlying exposures solely on the basis that it was concluded within a certain period before the declaration of the seller’s insolvency;
- b provisions where the SSPE can only prevent the invalidation referred to in point (a) if it can prove that it was not aware of the insolvency of the seller at the time of sale.

3 For the purpose of paragraph 1, clawback provisions in national insolvency laws that allow the liquidator or a court to invalidate the sale of underlying exposures in the case of fraudulent transfers, unfair prejudice to creditors or transfers intended to improperly favour particular creditors over others shall not constitute severe clawback provisions.

4 Where the seller is not the original lender, the true sale or assignment or transfer with the same legal effect of the underlying exposures to that seller, whether that true sale or

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assignment or transfer with the same legal effect is direct or through one or more intermediate steps, shall meet the requirements set out in paragraphs 1 to 3.

5 Where the transfer of the underlying exposures is performed by means of an assignment and perfected at a later stage than at the closing of the transaction, the triggers to effect such perfection shall include at least the following events:

- a severe deterioration in the seller credit quality standing;
- b insolvency of the seller; and
- c unremedied breaches of contractual obligations by the seller, including the seller's default.

6 The seller shall provide representations and warranties that, to the best of its knowledge, the underlying exposures included in the securitisation are not encumbered or otherwise in a condition that can be foreseen to adversely affect the enforceability of the true sale or assignment or transfer with the same legal effect.

7 The underlying exposures transferred from, or assigned by, the seller to the SSPE shall meet predetermined, clear and documented eligibility criteria which do not allow for active portfolio management of those exposures on a discretionary basis. For the purpose of this paragraph, substitution of exposures that are in breach of representations and warranties shall not be considered active portfolio management. Exposures transferred to the SSPE after the closing of the transaction shall meet the eligibility criteria applied to the initial underlying exposures.

8 The securitisation shall be backed by a pool of underlying exposures that are homogeneous in terms of asset type, taking into account the specific characteristics relating to the cash flows of the asset type including their contractual, credit-risk and prepayment characteristics. A pool of underlying exposures shall comprise only one asset type. The underlying exposures shall contain obligations that are contractually binding and enforceable, with full recourse to debtors and, where applicable, guarantors.

The underlying exposures shall have defined periodic payment streams, the instalments of which may differ in their amounts, relating to rental, principal, or interest payments, or to any other right to receive income from assets supporting such payments. The underlying exposures may also generate proceeds from the sale of any financed or leased assets.

The underlying exposures shall not include transferable securities, as defined in point [F⁶(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 that are not listed on a trading venue.

9 The underlying exposures shall not include any securitisation position.

10 The underlying exposures shall be originated in the ordinary course of the originator's or original lender's business pursuant to underwriting standards that are no less stringent than those that the originator or original lender applied at the time of origination to similar exposures that are not securitised. The underwriting standards pursuant to which the underlying exposures are originated and any material changes from prior underwriting standards shall be fully disclosed to potential investors without undue delay.

In the case of securitisations where the underlying exposures are residential loans, the pool of loans shall not include any loan that was marketed and underwritten on the

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premise that the loan applicant or, where applicable, intermediaries were made aware that the information provided might not be verified by the lender.

The assessment of the borrower's creditworthiness shall meet the requirements set out in Article 8 of Directive 2008/48/EC or paragraphs 1 to 4, point (a) of paragraph 5, and paragraph 6 of Article 18 of Directive 2014/17/EU or, where applicable, equivalent requirements in third countries.

The originator or original lender shall have expertise in originating exposures of a similar nature to those securitised.

11 The underlying exposures shall be transferred to the SSPE after selection without undue delay and shall not include, at the time of selection, exposures in default within the meaning of Article 178(1) of Regulation (EU) No 575/2013 or exposures to a credit-impaired debtor or guarantor, who, to the best of the originator's or original lender's knowledge:

- a has been declared insolvent or had a court grant his creditors a final non-appealable right of enforcement or material damages as a result of a missed payment within three years prior to the date of origination or has undergone a debt-restructuring process with regard to his non-performing exposures within three years prior to the date of transfer or assignment of the underlying exposures to the SSPE, except if:
 - (i) a restructured underlying exposure has not presented new arrears since the date of the restructuring, which must have taken place at least one year prior to the date of transfer or assignment of the underlying exposures to the SSPE; and
 - (ii) the information provided by the originator, sponsor and SSPE in accordance with points (a) and (e)(i) of the first subparagraph of Article 7(1) explicitly sets out the proportion of restructured underlying exposures, the time and details of the restructuring as well as their performance since the date of the restructuring;
- b was, at the time of origination, where applicable, on a public credit registry of persons with adverse credit history or, where there is no such public credit registry, another credit registry that is available to the originator or original lender; or
- c has a credit assessment or a credit score indicating that the risk of contractually agreed payments not being made is significantly higher than for comparable exposures held by the originator which are not securitised.

12 The debtors shall, at the time of transfer of the exposures, have made at least one payment, except in the case of revolving securitisations backed by exposures payable in a single instalment or having a maturity of less than one year, including without limitation monthly payments on revolving credits.

13 The repayment of the holders of the securitisation positions shall not have been structured to depend predominantly on the sale of assets securing the underlying exposures. This shall not prevent such assets from being subsequently rolled-over or refinanced.

The repayment of the holders of the securitisation positions whose underlying exposures are secured by assets the value of which is guaranteed or fully mitigated by a repurchase obligation by the seller of the assets securing the underlying exposures or by another third party shall not be considered to depend on the sale of assets securing those underlying exposures.

14 The [F7FCA may make] technical standards further specifying which underlying exposures referred to in paragraph 8 are deemed to be homogeneous.

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F8
...

Textual Amendments

- F6** Words in Art. 20(8) substituted (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/660\)](#), regs. 1(2), **20(2)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F7** Words in Art. 20(14) substituted (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/660\)](#), regs. 1(2), **20(3)(a)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F8** Words in Art. 20(14) omitted (31.12.2020) by virtue of [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/660\)](#), regs. 1(2), **20(3)(b)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 21

Requirements relating to standardisation

1 The originator, sponsor or original lender shall satisfy the risk-retention requirement in accordance with Article 6.

2 The interest-rate and currency risks arising from the securitisation shall be appropriately mitigated and any measures taken to that effect shall be disclosed. Except for the purpose of hedging interest-rate or currency risk, the SSPE shall not enter into derivative contracts and shall ensure that the pool of underlying exposures does not include derivatives. Those derivatives shall be underwritten and documented according to common standards in international finance.

3 Any referenced interest payments under the securitisation assets and liabilities shall be based on generally used market interest rates, or generally used sectoral rates reflective of the cost of funds, and shall not reference complex formulae or derivatives.

4 Where an enforcement or an acceleration notice has been delivered:

- a no amount of cash shall be trapped in the SSPE beyond what is necessary to ensure the operational functioning of the SSPE or the orderly repayment of investors in accordance with the contractual terms of the securitisation, unless exceptional circumstances require that an amount be trapped to be used, in the best interests of investors, for expenses in order to avoid the deterioration in the credit quality of the underlying exposures;
- b principal receipts from the underlying exposures shall be passed to investors via sequential amortisation of the securitisation positions, as determined by the seniority of the securitisation position;
- c repayment of the securitisation positions shall not be reversed with regard to their seniority; and
- d no provisions shall require automatic liquidation of the underlying exposures at market value.

5 Transactions which feature non-sequential priority of payments shall include triggers relating to the performance of the underlying exposures resulting in the priority of payments reverting to sequential payments in order of seniority. Such performance-related triggers shall

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include at least the deterioration in the credit quality of the underlying exposures below a predetermined threshold.

6 The transaction documentation shall include appropriate early amortisation provisions or triggers for termination of the revolving period where the securitisation is a revolving securitisation, including at least the following:

- a a deterioration in the credit quality of the underlying exposures to or below a predetermined threshold;
- b the occurrence of an insolvency-related event with regard to the originator or the servicer;
- c the value of the underlying exposures held by the SSPE falls below a predetermined threshold (early amortisation event); and
- d a failure to generate sufficient new underlying exposures that meet the predetermined credit quality (trigger for termination of the revolving period).

7 The transaction documentation shall clearly specify:

- a the contractual obligations, duties and responsibilities of the servicer and the trustee, if any, and other ancillary service providers;
- b the processes and responsibilities necessary to ensure that a default by or an insolvency of the servicer does not result in a termination of servicing, such as a contractual provision which enables the replacement of the servicer in such cases; and
- c provisions that ensure the replacement of derivative counterparties, liquidity providers and the account bank in the case of their default, insolvency, and other specified events, where applicable.

8 The servicer shall have expertise in servicing exposures of a similar nature to those securitised and shall have well-documented and adequate policies, procedures and risk-management controls relating to the servicing of exposures.

9 The transaction documentation shall set out in clear and consistent terms definitions, remedies and actions relating to delinquency and default of debtors, debt restructuring, debt forgiveness, forbearance, payment holidays, losses, charge offs, recoveries and other asset performance remedies. The transaction documentation shall clearly specify the priorities of payment, events which trigger changes in such priorities of payment as well as the obligation to report such events. Any change in the priorities of payments which will materially adversely affect the repayment of the securitisation position shall be reported to investors without undue delay.

10 The transaction documentation shall include clear provisions that facilitate the timely resolution of conflicts between different classes of investors, voting rights shall be clearly defined and allocated to bondholders and the responsibilities of the trustee and other entities with fiduciary duties to investors shall be clearly identified.

Article 22

Requirements relating to transparency

1 The originator and the sponsor shall make available data on static and dynamic historical default and loss performance, such as delinquency and default data, for substantially similar exposures to those being securitised, and the sources of those data and the basis for claiming similarity, to potential investors before pricing. Those data shall cover a period of at least five years.

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2 A sample of the underlying exposures shall be subject to external verification prior to issuance of the securities resulting from the securitisation by an appropriate and independent party, including verification that the data disclosed in respect of the underlying exposures is accurate.

3 The originator or the sponsor shall, before the pricing of the securitisation, make available to potential investors a liability cash flow model which precisely represents the contractual relationship between the underlying exposures and the payments flowing between the originator, sponsor, investors, other third parties and the SSPE, and shall, after pricing, make that model available to investors on an ongoing basis and to potential investors upon request.

4 In the case of a securitisation where the underlying exposures are residential loans or auto loans or leases, the originator and sponsor shall publish the available information related to the environmental performance of the assets financed by such residential loans or auto loans or leases, as part of the information disclosed pursuant to point (a) of the first subparagraph of Article 7(1).

5 The originator and the sponsor shall be responsible for compliance with Article 7. The information required by point (a) of the first subparagraph of Article 7(1) shall be made available to potential investors before pricing upon request. The information required by points (b) to (d) of the first subparagraph of Article 7(1) shall be made available before pricing at least in draft or initial form. The final documentation shall be made available to investors at the latest 15 days after closing of the transaction.

SECTION 2

Requirements for simple, transparent and standardised ABCP securitisation

Article 23

Simple, transparent and standardised ABCP securitisation

1 An ABCP transaction shall be considered STS where it complies with the transaction-level requirements provided for in Article 24.

2 An ABCP programme shall be considered STS where it complies with the requirements provided for in Article 26 and the sponsor of the ABCP programme complies with the requirements provided for in Article 25.

For the purpose of this Section, a ‘seller’ means ‘originator’ or ‘original lender’.

F93

Textual Amendments

F9 Art. 23(3) omitted (31.12.2020) by virtue of [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/660\)](#), regs. 1(2), **21** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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Changes to legislation: There are outstanding changes not yet made to Regulation (EU) 2017/2402 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

Article 24

Transaction-level requirements

1 The title to the underlying exposures shall be acquired by the SSPE by means of a true sale or assignment or transfer with the same legal effect in a manner that is enforceable against the seller or any other third party. The transfer of the title to the SSPE shall not be subject to severe clawback provisions in the event of the seller's insolvency.

2 For the purpose of paragraph 1, any of the following shall constitute severe clawback provisions:

- a provisions which allow the liquidator of the seller to invalidate the sale of the underlying exposures solely on the basis that it was concluded within a certain period before the declaration of the seller's insolvency;
- b provisions where the SSPE can only prevent the invalidation referred to in point (a) if it can prove that it was not aware of the insolvency of the seller at the time of sale.

3 For the purpose of paragraph 1, clawback provisions in national insolvency laws that allow the liquidator or a court to invalidate the sale of underlying exposures in the case of fraudulent transfers, unfair prejudice to creditors or transfers intended to improperly favour particular creditors over others shall not constitute severe clawback provisions.

4 Where the seller is not the original lender, the true sale or assignment or transfer with the same legal effect of the underlying exposures to the seller, whether that true sale or assignment or transfer with the same legal effect is direct or through one or more intermediate steps, shall meet the requirements set out in paragraphs 1 to 3.

5 Where the transfer of the underlying exposures is performed by means of an assignment and perfected at a later stage than at the closing of the transaction, the triggers to effect such perfection shall include at least the following events:

- a severe deterioration in the seller credit quality standing;
- b insolvency of the seller; and
- c unremedied breaches of contractual obligations by the seller, including the seller's default.

6 The seller shall provide representations and warranties that, to the best of its knowledge, the underlying exposures included in the securitisation are not encumbered or otherwise in a condition that can be foreseen to adversely affect the enforceability of the true sale or assignment or transfer with the same legal effect.

7 The underlying exposures transferred from, or assigned by, the seller to the SSPE shall meet predetermined, clear and documented eligibility criteria which do not allow for active portfolio management of those exposures on a discretionary basis. For the purpose of this paragraph, substitution of exposures that are in breach of representations and warranties shall not be considered active portfolio management. Exposures transferred to the SSPE after the closing of the transaction shall meet the eligibility criteria applied to the initial underlying exposures.

8 The underlying exposures shall not include any securitisation position.

9 The underlying exposures shall be transferred to the SSPE after selection without undue delay and shall not include, at the time of selection, exposures in default within the

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meaning of Article 178(1) of Regulation (EU) No 575/2013 or exposures to a credit-impaired debtor or guarantor, who, to the best of the originator's or original lender's knowledge:

- a has been declared insolvent or had a court grant his creditors a final non-appealable right of enforcement or material damages as a result of a missed payment within three years prior to the date of origination or has undergone a debt restructuring process with regard to his non-performing exposures within three years prior to the date of transfer or assignment of the underlying exposures to the SSPE, except if:
 - (i) a restructured underlying exposure has not presented new arrears since the date of the restructuring, which must have taken place at least one year prior to the date of transfer or assignment of the underlying exposures to the SSPE; and
 - (ii) the information provided by the originator, sponsor and SSPE in accordance with points (a) and (e)(i) of the first subparagraph of Article 7(1) explicitly sets out the proportion of restructured underlying exposures, the time and details of the restructuring as well as their performance since the date of the restructuring;
- b was, at the time of origination, where applicable, on a public credit registry of persons with adverse credit history or, where there is no such public credit registry, another credit registry that is available to the originator or original lender; or
- c has a credit assessment or a credit score indicating that the risk of contractually agreed payments not being made is significantly higher than for comparable exposures held by the originator which are not securitised.

10 The debtors shall, at the time of transfer of the exposures, have made at least one payment, except in the case of revolving securitisations backed by exposures payable in a single instalment or having a maturity of less than one year, including without limitation monthly payments on revolving credits.

11 The repayment of the holders of the securitisation positions shall not have been structured to depend predominantly on the sale of assets securing the underlying exposures. This shall not prevent such assets from being subsequently rolled over or refinanced.

The repayment of the holders of the securitisation positions whose underlying exposures are secured by assets the value of which is guaranteed or fully mitigated by a repurchase obligation by the seller of the assets securing the underlying exposures or by another third party shall not be considered to depend on the sale of assets securing those underlying exposures.

12 The interest-rate and currency risks arising from the securitisation shall be appropriately mitigated and any measures taken to that effect shall be disclosed. Except for the purpose of hedging interest-rate or currency risk, the SSPE shall not enter into derivative contracts and shall ensure that the pool of underlying exposures does not include derivatives. Those derivatives shall be underwritten and documented according to common standards in international finance.

13 The transaction documentation shall set out, in clear and consistent terms, definitions, remedies and actions relating to delinquency and default of debtors, debt restructuring, debt forgiveness, forbearance, payment holidays, losses, charge-offs, recoveries and other asset-performance remedies. The transaction documentation shall clearly specify the priorities of payment, events which trigger changes in such priorities of payment as well as the obligation to report such events. Any change in the priorities of payments which will materially adversely affect the repayment of the securitisation position shall be reported to investors without undue delay.

Status: Point in time view as at 31/12/2020.

Changes to legislation: There are outstanding changes not yet made to Regulation (EU) 2017/2402 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

14 The originator and the sponsor shall make available data on static and dynamic historical default and loss performance, such as delinquency and default data, for substantially similar exposures to those being securitised, and the sources of those data and the basis for claiming similarity, to potential investors before pricing. Where the sponsor does not have access to such data, it shall obtain from the seller access to data, on a static or dynamic basis, on the historical performance, such as delinquency and default data, for exposures substantially similar to those being securitised. All such data shall cover a period no shorter than five years, except for data relating to trade receivables and other short-term receivables, for which the historical period shall be no shorter than three years.

15 ABCP transactions shall be backed by a pool of underlying exposures that are homogeneous in terms of asset type, taking into account the characteristics relating to the cash flows of different asset types including their contractual, credit-risk and prepayment characteristics. A pool of underlying exposures shall only comprise one asset type.

The pool of underlying exposures shall have a remaining weighted average life of not more than one year, and none of the underlying exposures shall have a residual maturity of more than three years.

By way of derogation from the second subparagraph, pools of auto loans, auto leases and equipment lease transactions shall have a remaining weighted average life of not more than three and a half years, and none of the underlying exposures shall have a residual maturity of more than six years.

The underlying exposures shall not include loans secured by residential or commercial mortgages or fully guaranteed residential loans, as referred to in point (e) of the first subparagraph of Article 129(1) of Regulation (EU) No 575/2013. The underlying exposures shall contain obligations that are contractually binding and enforceable, with full recourse to debtors with defined payment streams relating to rental, principal, interest, or related to any other right to receive income from assets warranting such payments. The underlying exposures may also generate proceeds from the sale of any financed or leased assets. The underlying exposures shall not include transferable securities as defined in point [F¹⁰(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] that are not listed on a trading venue.

[F¹¹In 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 IP completion day.]

16 Any referenced interest payments under the ABCP transaction's assets and liabilities shall be based on generally used market interest rates, or generally used sectoral rates reflective of the cost of funds, but shall not reference complex formulae or derivatives. Referenced interest payments under the ABCP transaction's liabilities may be based on interest rates reflective of an ABCP programme's cost of funds.

17 Following the seller's default or an acceleration event:

- a no amount of cash shall be trapped in the SSPE beyond what is necessary to ensure the operational functioning of the SSPE or the orderly repayment of investors in accordance with the contractual terms of the securitisation unless exceptional circumstances require that an amount be trapped to be used, in the best interests of investors, for expenses in order to avoid the deterioration in the credit quality of the underlying exposures;

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- b principal receipts from the underlying exposures shall be passed to investors holding a securitisation position via sequential payment of the securitisation positions, as determined by the seniority of the securitisation position; and
- c no provisions shall require automatic liquidation of the underlying exposures at market value.

18 The underlying exposures shall be originated in the ordinary course of the seller's business pursuant to underwriting standards that are no less stringent than those that the seller applies at the time of origination to similar exposures that are not securitised. The underwriting standards pursuant to which the underlying exposures are originated and any material changes from prior underwriting standards shall be fully disclosed to the sponsor and other parties directly exposed to the ABCP transaction without undue delay. The seller shall have expertise in originating exposures of a similar nature to those securitised.

19 Where an ABCP transaction is a revolving securitisation, the transaction documentation shall include triggers for termination of the revolving period, including at least the following:

- a a deterioration in the credit quality of the underlying exposures to or below a predetermined threshold; and
- b the occurrence of an insolvency-related event with regard to the seller or the servicer.

20 The transaction documentation shall clearly specify:

- a the contractual obligations, duties and responsibilities of the sponsor, the servicer and the trustee, if any, and other ancillary service providers;
- b the processes and responsibilities necessary to ensure that a default or insolvency of the servicer does not result in a termination of servicing;
- c provisions that ensure the replacement of derivative counterparties and the account bank upon their default, insolvency and other specified events, where applicable; and
- d how the sponsor meets the requirements of Article 25(3).

21 ^[F12]The FCA may make] technical standards further specifying which underlying exposures referred to in paragraph 15 are deemed to be homogeneous.

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Textual Amendments

- F10** Words in Art. 24(15) substituted (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/660\)](#), regs. 1(2), **22(a)(i)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F11** Words in Art. 24(15) inserted (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/660\)](#), regs. 1(2), **22(a)(ii)** (as amended by S.I. 2020/1301, regs. 1, 3, **Sch. para. 35(d)**) (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F12** Words in Art. 24(21) substituted (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/660\)](#), regs. 1(2), **22(b)(i)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F13** Words in Art. 24(21) omitted (31.12.2020) by virtue of [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/660\)](#), regs. 1(2), **22(b)(ii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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Article 25

Sponsor of an ABCP programme

1 The sponsor of the ABCP programme shall be a [^{F14}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].

2 The sponsor of an ABCP programme shall be a liquidity facility provider and shall support all securitisation positions on an ABCP programme level by covering all liquidity and credit risks and any material dilution risks of the securitised exposures as well as any other transaction- and programme-level costs if necessary to guarantee to the investor the full payment of any amount under the ABCP with such support. The sponsor shall disclose a description of the support provided at transaction level to the investors including a description of the liquidity facilities provided.

3 Before being able to sponsor an STS ABCP programme, the credit institution shall demonstrate to [^{F15}the PRA] that its role under paragraph 2 does not endanger its solvency and liquidity, even in an extreme stress situation in the market.

The requirement referred to in the first subparagraph of this paragraph shall be considered to be fulfilled where [^{F16}the PRA] has determined on the basis of the review and evaluation referred to Article 97(3) of Directive 2013/36/EU that the arrangements, strategies, processes and mechanisms implemented by that credit institution and the own funds and liquidity held by it ensure the sound management and coverage of its risks.

4 The sponsor shall perform its own due diligence and shall verify compliance with the requirements set out in Article 5(1) and (3) of this Regulation, as applicable. It shall also verify that the seller has in place servicing capabilities and collection processes that meet the requirements specified in points (h) to (p) of Article 265(2) of Regulation (EU) No 575/2013 or equivalent requirements in third countries.

5 The seller, at the level of a transaction, or the sponsor, at the level of the ABCP programme, shall satisfy the risk-retention requirement referred to in Article 6.

6 The sponsor shall be responsible for compliance with Article 7 at ABCP programme level and for making available to potential investors before pricing upon their request:

- a the aggregate information required by point (a) of the first subparagraph of Article 7(1); and
- b the information required by points (b) to (e) of the first subparagraph of Article 7(1), at least in draft or initial form.

7 In the event that the sponsor does not renew the funding commitment of the liquidity facility before its expiry, the liquidity facility shall be drawn down and the maturing securities shall be repaid.

Textual Amendments

- F14** Words in Art. 25(1) substituted (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/660\)](#), regs. 1(2), **23(a)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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- F15** Words in Art. 25(3) substituted (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/660\)](#), regs. 1(2), **23(b)(i)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F16** Words in Art. 25(3) substituted (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/660\)](#), regs. 1(2), **23(b)(ii)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 26

Programme-level requirements

1 All ABCP transactions within an ABCP programme shall fulfil the requirements of Article 24(1) to (8) and (12) to (20).

A maximum of 5 % of the aggregate amount of the exposures underlying the ABCP transactions and which are funded by the ABCP programme may temporarily be non-compliant with the requirements of Article 24(9), (10) and (11) without affecting the STS status of the ABCP programme.

For the purpose of the second subparagraph of this paragraph, a sample of the underlying exposures shall regularly be subject to external verification of compliance by an appropriate and independent party.

2 The remaining weighted average life of the underlying exposures of an ABCP programme shall not be more than two years.

3 The ABCP programme shall be fully supported by a sponsor in accordance with Article 25(2).

4 The ABCP programme shall not contain any resecuritisation and the credit enhancement shall not establish a second layer of tranching at the programme level.

5 The securities issued by an ABCP programme shall not include call options, extension clauses or other clauses that have an effect on their final maturity, where such options or clauses may be exercised at the discretion of the seller, sponsor or SSPE.

6 The interest-rate and currency risks arising at ABCP programme level shall be appropriately mitigated and any measures taken to that effect shall be disclosed. Except for the purpose of hedging interest-rate or currency risk, the SSPE shall not enter into derivative contracts and shall ensure that the pool of underlying exposures does not include derivatives. Those derivatives shall be underwritten and documented according to common standards in international finance.

7 The documentation relating to the ABCP programme shall clearly specify:

- a the responsibilities of the trustee and other entities with fiduciary duties, if any, to investors;
- b the contractual obligations, duties and responsibilities of the sponsor, who shall have expertise in credit underwriting, the trustee, if any, and other ancillary service providers;
- c the processes and responsibilities necessary to ensure that a default or insolvency of the servicer does not result in a termination of servicing;
- d the provisions for replacement of derivative counterparties, and the account bank at ABCP programme level upon their default, insolvency and other specified events, where the liquidity facility does not cover such events;

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- e that, upon specified events, default or insolvency of the sponsor, remedial steps shall be provided for to achieve, as appropriate, collateralisation of the funding commitment or replacement of the liquidity facility provider; and
- f that the liquidity facility shall be drawn down and the maturing securities shall be repaid in the event that the sponsor does not renew the funding commitment of the liquidity facility before its expiry.

8 The servicer shall have expertise in servicing exposures of a similar nature to those securitised and shall have well-documented policies, procedures and risk-management controls relating to the servicing of exposures.

SECTION 3

STS notification

Article 27

STS notification requirements

[^{F17} 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 securitisation, the STS notification must designate one of them to be the first contact point for investors and the FCA.]

2 The originator, sponsor or SSPE may use the service of a third party authorised under Article 28 to check whether a securitisation complies with Articles 19 to 22 or Articles 23 to 26. However, the use of such a service shall not, under any circumstances, affect the liability of the originator, sponsor or SSPE in respect of their legal obligations under this Regulation. The use of such service shall not affect the obligations imposed on institutional investors as set out in Article 5.

Where the originator, sponsor or SSPE use the service of a third party authorised pursuant to Article 28 to assess whether a securitisation complies with Articles 19 to 22 or Articles 23 to 26, the STS notification shall include a statement that compliance with the STS criteria was confirmed by that authorised third party. The notification shall include the name of the authorised third party [^{F18}and its place of establishment].

3 Where the originator or original lender is not a credit institution or investment firm, as defined in points (1) and (2) of Article 4(1) of Regulation (EU) No 575/2013, established

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in the [F19United Kingdom], the notification pursuant to paragraph 1 of this Article shall be accompanied by the following:

- a confirmation by the originator or original lender that its credit-granting is done on the basis of sound and well-defined criteria and clearly established processes for approving, amending, renewing and financing credits and that the originator or original lender has effective systems in place to apply such processes in accordance with Article 9 of this Regulation; and
- b a declaration by the originator or original lender as to whether credit granting referred to in point (a) is subject to supervision.

4 The originator and sponsor shall immediately notify [F20the FCA] when a securitisation no longer meets the requirements of either Articles 19 to 22 or Articles 23 to 26.

[F215 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.]

6 [F22The FCA may make] technical standards specifying the information that the originator, sponsor and SSPE are required to provide in order to comply with the obligations referred to in paragraph 1.

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7 In order to ensure uniform conditions for the implementation of this Regulation, [F24The FCA may make] technical standards to establish the templates to be used for the provision of the information referred to in paragraph 6.

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Textual Amendments

- F17** Art. 27(1) substituted (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/660), regs. 1(2), **24(2)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F18** Words in Art. 27(2) substituted (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/660), regs. 1(2), **24(3)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F19** Words in Art. 27(3) substituted (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/660), regs. 1(2), **24(4)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F20** Words in Art. 27(4) substituted (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/660), regs. 1(2), **24(5)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F21** Art. 27(5) substituted (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/660), regs. 1(2), **24(6)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F22** Words in Art. 27(6) substituted (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/660), regs. 1(2), **24(7)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F23** Words in Art. 27(6) omitted (31.12.2020) by virtue of [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/660), regs. 1(2), **24(7)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F24** Words in Art. 27(7) substituted (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/660), regs. 1(2), **24(8)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F25** Words in Art. 27(7) omitted (31.12.2020) by virtue of [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/660), regs. 1(2), **24(8)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 28

Third party verifying STS compliance

1 A third party referred to in Article 27(2) shall be authorised by the [^{F26}FCA] to assess the compliance of securitisations with the STS criteria provided for in Articles 19 to 22 or Articles 23 to 26. The [^{F26}FCA] shall grant the authorisation if the following conditions are met:

- a the third party only charges non-discriminatory and cost-based fees to the originators, sponsors or SSPEs involved in the securitisations which the third party assesses without differentiating fees depending on, or correlated to, the results of its assessment;
- b the third party is neither a regulated entity as defined in point (4) of Article 2 of Directive 2002/87/EC nor a credit rating agency as defined in ^{F27}... Article 3(1) of Regulation (EC) No 1060/2009, and the performance of the third party's other activities does not compromise the independence or integrity of its assessment;
- c the third party shall not provide any form of advisory, audit or equivalent service to the originator, sponsor or SSPE involved in the securitisations which the third party assesses;
- d the members of the management body of the third party have professional qualifications, knowledge and experience that are adequate for the task of the third party and they are of good repute and integrity;
- e the management body of the third party includes at least one third, but no fewer than two, independent directors;

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- f the third party takes all necessary steps to ensure that the verification of STS compliance is not affected by any existing or potential conflicts of interest or business relationship involving the third party, its shareholders or members, managers, employees or any other natural person whose services are placed at the disposal or under the control of the third party. To that end, the third party shall establish, maintain, enforce and document an effective internal control system governing the implementation of policies and procedures to identify and prevent potential conflicts of interest. Potential or existing conflicts of interest which have been identified shall be eliminated or mitigated and disclosed without delay. The third party shall establish, maintain, enforce and document adequate procedures and processes to ensure the independence of the assessment of STS compliance. The third party shall periodically monitor and review those policies and procedures in order to evaluate their effectiveness and assess whether it is necessary to update them; and
- g the third party can demonstrate that it has proper operational safeguards and internal processes that enable it to assess STS compliance.

The [F26FCA] shall withdraw the authorisation when it considers the third party to be materially non-compliant with the first subparagraph.

2 A third party authorised in accordance with paragraph 1 shall notify [F28the FCA] without delay of any material changes to the information provided under that paragraph, or any other changes that could reasonably be considered to affect the assessment of [F28the FCA].

3 [F29The FCA] may charge cost-based fees to the third party referred to in paragraph 1, in order to cover necessary expenditure relating to the assessment of applications for authorisation and to the subsequent monitoring of compliance with the conditions set out in paragraph 1.

4 [F30The FCA may make] technical standards specifying the information to be provided to [F31it] in the application for the authorisation of a third party in accordance with paragraph 1.

F32
...

Textual Amendments

- F26** Word in Art. 28(1) substituted (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/660\)](#), regs. 1(2), **25(a)(i)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F27** Words in Art. 28(1)(b) omitted (31.12.2020) by virtue of [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/660\)](#), regs. 1(2), **25(a)(ii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F28** Words in Art. 28(2) substituted (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/660\)](#), regs. 1(2), **25(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F29** Words in Art. 28(3) substituted (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/660\)](#), regs. 1(2), **25(c)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F30** Words in Art. 28(4) substituted (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/660\)](#), regs. 1(2), **25(d)(i)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F31** Word in Art. 28(4) substituted (31.12.2020) by [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/660\)](#), regs. 1(2), **25(d)(i)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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F32 Words in Art. 28(4) omitted (31.12.2020) by virtue of [The Securitisation \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/660\)](#), regs. 1(2), **25(d)(ii)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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