

Draft Regulations laid before Parliament under sections 71S(2) and 429(2) and (9) of the Financial Services and Markets Act 2000 and section 4(9) of the Financial Services and Markets Act 2023, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2023 No.

FINANCIAL SERVICES AND MARKETS

The Securitisation Regulations 2023

Made - - - - *******

Coming into force in accordance with regulation 2

The Treasury make the following Regulations in exercise of the powers conferred by sections 3RE, 71K, 71M, 71N(2) and (5), 71O(2), (10) and (11), 71P, 71Q, 138EA and 428(3) of the Financial Services and Markets Act 2000(1) and sections 4, 84(2) and 86(5) and (6) of the Financial Services and Markets Act 2023(2).

In accordance with sections 71S(2) and 429(2) and (9) of the Financial Services and Markets Act 2000(3) and section 4(9) of the Financial Services and Markets Act 2023(4), a draft of these Regulations has been laid before, and approved by a resolution of, each House of Parliament.

PART 1

Introductory

Citation and extent

- 1.—(1) These Regulations may be cited as the Securitisation Regulations 2023.
- (2) These Regulations extend to England and Wales, Scotland and Northern Ireland.

Commencement

2.—(1) The following provisions come into force on the day after that on which these Regulations are made—

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- (1) 2000 c. 8. Section 3RE was inserted by section 30 of the Financial Services and Markets Act 2023 (c. 29); sections 71K to 71Q were inserted by section 8(2) of that Act; section 138EA was inserted by section 31(2) of that Act. Section 428(3) was amended by section 66(3)(a) of that Act.
 - (2) 2023 c. 29.
 - (3) Section 71S was inserted by section 8(2) of the Financial Services and Markets Act 2023; section 429(2) was amended by sections 30(3) and 31(5) of that Act. There are other amendments to section 429(2) which are not relevant.
 - (4) For the meaning of “the affirmative procedure”, see section 84(3) of the Financial Services and Markets Act 2023.

- (a) this Part,
- (b) Part 2 (designated activities),
- (c) regulation 8 (matters to which FCA and PRA must have regard when making rules relating to securitisation),
- (d) regulation 13 (designation of country or territory in relation to securitisations), for the purpose only of enabling the Treasury to make regulations, and
- (e) the remaining provisions, for the purposes only of enabling the FCA or the PRA—
 - (i) to make rules,
 - (ii) to give directions or guidance, or
 - (iii) to issue statements of policy.

(2) So far as not already in force by virtue of paragraph (1), these Regulations come into force on the day on which the revocation of the EU Securitisation Regulation 2017⁽⁵⁾ by section 1(1) of, and Schedule 1 to, the Financial Services and Markets Act 2023 comes into force (“the main commencement day”).

Interpretation

3.—(1) In these Regulations—

“ABCP programme” means a programme of securitisations the securities issued by which predominantly take the form of asset-backed commercial paper with an original maturity of one year or less;

“ABCP transaction” means a securitisation within an ABCP programme;

“authorised person” has the meaning given in section 31(2) of FSMA 2000;

“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⁽⁶⁾;

“credit institution” means an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account;

“designated activity rules” means rules made under section 71N of FSMA 2000⁽⁷⁾;

“EMIR” 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⁽⁸⁾;

“established in the United Kingdom” means constituted under the law of a part of the United Kingdom—

- (a) with a registered office in any part of the United Kingdom, or
- (b) if the person does not have a registered office, with a head office in any part of the United Kingdom;

“the EU Securitisation Regulation 2017” 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 securitisations, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012⁽⁹⁾;

⁽⁵⁾ For the meaning of “the EU Securitisation Regulation 2017” see regulation 3(1).

⁽⁶⁾ EUR 2013/575.

⁽⁷⁾ Section 71N was inserted by section 8 of the Financial Services and Markets Act 2023.

⁽⁸⁾ EUR 2012/648.

⁽⁹⁾ EUR 2017/202.

“FSMA 2000” means the Financial Services and Markets Act 2000;

“institutional investor” means an investor which is one of the following—

- (a) an insurance undertaking as defined in section 417(1) of FSMA 2000⁽¹⁰⁾;
- (b) a reinsurance undertaking as defined in section 417(1) of FSMA 2000⁽¹¹⁾;
- (c) the trustees or managers of an occupational pension scheme;
- (d) a fund manager of an occupational pension scheme appointed under section 34(2) of the Pensions Act 1995⁽¹²⁾ that, in respect of activity undertaken pursuant to that appointment, is authorised for the purposes of section 31 of FSMA 2000;
- (e) an AIFM (as defined in regulation 4 of the Alternative Investment Fund Managers Regulations 2013⁽¹³⁾)—
 - (i) with permission under Part 4A of FSMA 2000⁽¹⁴⁾ in respect of the activity specified by article 51ZC of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001⁽¹⁵⁾ (managing an AIF), and
 - (ii) which markets or manages an AIF (as defined in regulation 3 of the 2013 Regulations) in the United Kingdom,

and for the purposes of sub-paragraph (ii), an AIFM markets an AIF when the AIFM makes a direct or indirect offering or placement of units or shares of an AIF managed by it to or with an investor domiciled or with a registered office in the United Kingdom, or when another person makes such an offering or placement at the initiative of, or on behalf of, the AIFM;

- (f) a small registered UK AIFM;
- (g) a management company as defined in section 237(2) of FSMA 2000⁽¹⁶⁾;
- (h) a UCITS, as defined in section 236A of FSMA 2000⁽¹⁷⁾, which is an authorised open ended investment company as defined in section 237(3) of FSMA 2000;
- (i) a CRR firm as defined in Article 4(1)(2A) of the Capital Requirements Regulation⁽¹⁸⁾;
- (j) an FCA investment firm as defined in Article 4(1)(2AB) of the Capital Requirements Regulation⁽¹⁹⁾;

“investor” means a person holding a securitisation position;

“main commencement day” has the meaning given in regulation 2(2);

“occupational pension scheme” means an occupational pension scheme as defined in section 1(1) of the Pension Schemes Act 1993⁽²⁰⁾ that has its main administration in the United Kingdom;

“original lender”, in relation to a securitisation, means an entity which, itself or through related entities, directly or indirectly, concluded the original agreement which created the obligations or potential obligations of the debtor or potential debtor giving rise to the exposures being securitised;

(10) Definition substituted by S.I. 2019/632.

(11) Definition substituted by S.I. 2019/632.

(12) 1995 c. 26. Definition amended by section 5(3) of the Trustee Delegation Act 1999 (c. 15).

(13) S.I. 2013/1773.

(14) Part 4A was substituted by section 11 of the Financial Services Act 2012 (c. 21).

(15) S.I. 2001/544. Article 51ZC was substituted by S.I. 2013/1773.

(16) Definition inserted by S.I. 2011/1613 and substituted by S.I. 2019/325.

(17) Section 236A was inserted by S.I. 2019/325.

(18) Article 4(1)(2A) was inserted by S.I. 2018/1401; the definition was amended by section 1(2) of the Financial Services Act 2021 (c. 22).

(19) Article 4(1)(2AB) was inserted by section 1(4) of the Financial Services Act 2021.

(20) 1993 c. 48. Definition was substituted by section 239 of Pensions Act 2004 (c. 35) and amended by S.I. 2019/192.

“originator”, in relation to a securitisation, means an entity which—

- (a) itself or through related entities, directly or indirectly, was involved in the original agreement which created the obligations or potential obligations of the debtor or potential debtor giving rise to the exposures being securitised, or
- (b) purchases a third party’s exposures on its own account and then securitises them;

“PRA-authorized person” has the meaning given in section 2B(5) of FSMA 2000⁽²¹⁾;

“securitisation” means a transaction or scheme, whereby the credit risk associated with an exposure or a pool of exposures is tranced, having all of the following characteristics—

- (a) payments in the transaction or scheme are dependent upon the performance of the exposure or of the pool of exposures,
- (b) the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme, and
- (c) the transaction or scheme does not create exposures which possess all of the following characteristics—
 - (i) the exposure is to an entity which was created specifically to finance or operate physical assets or is an economically comparable exposure;
 - (ii) the contractual arrangements give the lender a substantial degree of control over the assets and the income that they generate;
 - (iii) the primary source of repayment of the obligation is the income generated by the assets being financed, rather than the independent capacity of a broader commercial enterprise;

“securitisation position” means an exposure to a securitisation;

“securitisation repository” means a body corporate that centrally collects and maintains the records of securitisations;

“securitisation special purpose entity” or “SSPE” means a corporation, trust or other entity, other than an originator or sponsor, established for the purpose of carrying out one or more securitisations, the activities of which are limited to those appropriate to accomplishing that objective and the structure of which is intended to isolate the obligations of the securitisation special purpose entity from those of the originator;

“small registered UK AIFM” has the meaning given in regulation 2(1) of the Alternative Investment Fund Managers Regulations 2013⁽²²⁾;

“sponsor” means a credit institution or an investment firm as defined in paragraph 1A of Article 2 of Regulation 600/2014/EU⁽²³⁾, whether located in the United Kingdom or in a country or territory outside the United Kingdom, which—

- (a) is not an originator, and
- (b) either—
 - (i) establishes and manages an ABCP programme or other securitisation that purchases exposures from third party entities, or
 - (ii) establishes an ABCP 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 or territory in which the entity is established;

⁽²¹⁾ Section 2B was substituted by section 6(1) of the Financial Services Act 2012; there are amendments which are not relevant.

⁽²²⁾ S.I. 2013/1773.

⁽²³⁾ EUR 2014/600. Paragraph 1A of Article 2 was inserted by S.I. 2018/1403.

“STS criteria” has the meaning given in regulation 9(1)(a);

“STS notification” means a notification under regulation 10(1);

“STS securitisation” has the meaning given in regulation 9;

“territory” includes the European Union and any other international organisation or authority comprising countries or territories;

“third party verifier” has the meaning given in regulation 24;

“tranche” means a contractually established segment of the credit risk associated with an exposure or a pool of exposures, where a position in the segment entails a risk of credit loss greater than or less than a position of the same amount in another segment, without taking account of credit protection provided by third parties directly to the holders of positions in the segment or in other segments;

“the Tribunal” means the Upper Tribunal;

“trustees or managers”, in relation to an occupational pension scheme, means—

- (a) in relation to a scheme established under a trust, the trustees, and
- (b) in relation to any other scheme, the persons responsible for the management of the scheme;

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971⁽²⁴⁾ in any part of the United Kingdom.

(2) In these Regulations, references to rules made by the FCA or the PRA are to those rules as they have effect from time to time.

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⁽²⁵⁾ 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.

⁽²⁴⁾ 1971 c. 80.

⁽²⁵⁾ Inserted by section 8(2) of the Financial Services and Markets Act 2023.

(2) Rules made by virtue of paragraph (1) may not impose requirements on a PRA-authorized 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)(26) 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(27) 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

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

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

- (ii) in order to advance any of the FCA’s operational objectives set out in section 1B(3) of FSMA 2000⁽²⁸⁾.
- (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
 - (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⁽²⁹⁾ 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,

⁽²⁸⁾ Section 1B was inserted by section 6(1) of the Financial Services Act 2012.

⁽²⁹⁾ Inserted by section 8(2) of the Financial Services and Markets Act 2023.

- (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.

PART 3

Matters to consider when making rules

Matter to which FCA and PRA must have regard when making rules relating to securitisation

- 8.**—(1) The coherence of the overall framework for the regulation of securitisation is specified for the purposes of section 138EA of FSMA 2000(**30**) (matters to consider when making rules).
- (2) The specification under paragraph (1) applies to the following—
- (a) the power of the FCA to make designated activity rules by virtue of regulation 5,
 - (b) the power of the FCA to make rules under any provision of these Regulations,
 - (c) the power of the FCA to make rules under section 137A of FSMA 2000(**31**) relating to securitisation, and
 - (d) the power of the PRA to make rules under section 137G of FSMA 2000(**32**) relating to securitisation.

(30) Inserted by section 31(2) of the Financial Services and Markets Act 2023.

(31) Inserted by section 24(1) of the Financial Services Act 2012.

(32) Inserted by section 24(1) of the Financial Services Act 2012.

PART 4

Simple, transparent and standardised securitisations

STS securitisations

- 9.—(1) In these Regulations, “STS securitisation” means a securitisation which—
- (a) meets such criteria as to simplicity, transparency and standardisation as may be specified for the purposes of this regulation in designated activity rules made by virtue of regulation 5 (“the STS criteria”),
 - (b) also meets the further condition in paragraph (2), and
 - (c) is included on the list published by the FCA under regulation 10.
- (2) The further condition is—
- (a) in the case of a securitisation which is not an ABCP programme or an ABCP transaction, that the originator and sponsor involved in the securitisation are established in the United Kingdom;
 - (b) in the case of a securitisation which is an ABCP programme, that the sponsor involved in the ABCP programme is established in the United Kingdom;
 - (c) in the case of a securitisation which is an ABCP transaction, that the sponsor involved in the ABCP programme of which that ABCP transaction forms part is established in the United Kingdom.
- (3) In paragraph 2 of Schedule 3 (which relates to securitisations notified to the FCA before the main commencement day), sub-paragraph (3) treats certain securitisations as meeting the STS criteria if they comply with the provisions mentioned in that sub-paragraph.

STS notification requirements

- 10.—(1) Where the sponsor or originator of a securitisation notifies the FCA in accordance with designated activity rules made by virtue of regulation 5 that the securitisation falls within regulation 9(1)(a) and (b), the FCA must publish the notification on its official website.
- (2) The FCA must maintain on its official website a list of all the securitisations notified to it (together with the securitisations to which paragraph 2(1) of Schedule 3 applies) and must update the list on a regular basis.
- (3) The FCA must remove a securitisation from the list if—
- (a) the FCA does not consider the securitisation to be an STS securitisation, or
 - (b) the FCA has been notified by the originator or sponsor that the securitisation is no longer an STS securitisation.
- (4) The PRA must notify the FCA whenever the PRA imposes a sanction on the ground that the originator, sponsor or original lender in relation to an STS securitisation has failed to comply with a requirement that is applicable to that person in the person’s capacity as originator, sponsor or original lender and is imposed by rules made by the PRA under section 137G of FSMA 2000 relating to—
- (a) risk retention requirements,
 - (b) transparency requirements, or
 - (c) credit-granting requirements.
- (5) Paragraph (6) applies where the FCA—
- (a) imposes a sanction on the ground that the originator, sponsor, original lender or SSPE in relation to an STS securitisation has failed to comply with a relevant requirement,

- (b) imposes a sanction on the ground that a third party verifier has failed to comply with regulation 25(3), or
 - (c) receives a notification under paragraph (4).
- (6) The FCA must immediately indicate the fact within paragraph (5) in relation to the securitisation concerned on the list maintained under paragraph (2).
- (7) Where the FCA gives a notice under regulation 11(2) relating to the removal of a securitisation from the list on a future date under paragraph (3)(a), the FCA must immediately indicate that fact in relation to the securitisation concerned on the list.
- (8) Where the FCA has exercised its power under paragraph (3)(a) to remove a securitisation from the list maintained under paragraph (2) but the matter remains open to review, the FCA must include on the list an indication that the decision to remove the securitisation remains open to review.
- (9) In paragraph (5), “relevant requirement” means a requirement which is applicable to a person in the person’s capacity as originator, sponsor, original lender or SSPE and is imposed—
- (a) by designated activity rules made by virtue of regulation 5 relating to—
 - (i) risk retention requirements,
 - (ii) transparency requirements,
 - (iii) credit-granting requirements,
 - (iv) STS criteria, or
 - (v) the notification of an STS securitisation or that a securitisation has ceased to be an STS securitisation, or
 - (b) by regulation 12.
- (10) For the purposes of paragraph (8), whether a matter is open to review is to be determined in accordance with section 391(8) of FSMA 2000.

Removal of STS securitisation from FCA list: procedure

- 11.**—(1) The removal of a securitisation under regulation 10(3)(a) from the list maintained under regulation 10(2) takes effect—
- (a) immediately, if the notice under paragraph (2) states that that is the case;
 - (b) in any other case, on such date as may be specified in the notice.
- (2) If the FCA removes, or proposes to remove, a securitisation under regulation 10(3)(a), it must give written notice to the originator or sponsor who gave the FCA the STS notification.
- (3) The notice must—
- (a) give details of the FCA’s action or proposed action,
 - (b) state the FCA’s reasons for considering that the securitisation does not comply with regulation 9(1)(a) or (b) and for choosing the date on which the removal took effect or takes effect,
 - (c) inform the person to whom the notice is given (“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),
 - (d) inform P of the date on which the removal took effect or takes effect, and
 - (e) inform P of P’s right to refer the matter to the Tribunal.
- (4) The FCA may extend the period allowed under the notice for making representations.

(5) If, having considered any representations made to it, the FCA decides to maintain, vary or revoke its earlier decision it must give written notice to the person to whom the notice under subsection (2) was given.

(6) Where a notice has been given under paragraph (2) or (5) in relation to a securitisation, the originator or sponsor may refer the matter to the Tribunal.

Use of STS designation

12.—(1) The originator, sponsor or SSPE 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 the securitisation is—

- (a) an STS securitisation,
- (b) an overseas STS securitisation, or
- (c) a qualifying EU securitisation.

(2) In paragraph (1)(b) “overseas STS securitisation” means a securitisation of a description in relation to which a country or territory outside the United Kingdom is designated by regulations under regulation 13.

(3) In paragraph (1)(c) “qualifying EU securitisation” means a securitisation—

- (a) which meets all the requirements of Section 1 or Section 2 of Chapter 4 of the EU Securitisation Regulation 2017,
- (b) of which the European Securities and Markets Authority was notified pursuant to Article 27(1) of that Regulation before the relevant time, and
- (c) which is included in the list referred to in Article 27(5) of that Regulation.

(4) In paragraph (3), any reference to a provision of the EU Securitisation Regulation 2017 is a reference to that provision as it had or has effect in relation to the European Union at any time on or after the date of the notification and before the relevant time.

(5) In paragraph (3)(b) and (4) “the relevant time” means 11 p.m. on 31st December 2024.

Overseas simple, transparent and standardised securitisations regime

13.—(1) The Treasury may by regulations designate a country or territory in relation to securitisations of descriptions specified in the regulations.

(2) The power in paragraph (1) is exercisable only if the Treasury are satisfied that the law and practice which applies in the country or territory, in relation to securitisations of the descriptions specified, has equivalent effect (taken as a whole) to applicable UK law.

(3) In determining whether the condition in paragraph (2) is satisfied, the Treasury must have regard to the effect of any law and practice applying in the country or territory to securitisations of the descriptions to be specified with respect to the following in particular—

- (a) criteria as to simplicity, transparency and comparability;
- (b) the supervision and enforcement framework.

(4) In paragraph (2) “applicable UK law” means any enactment of domestic law as it applies to STS securitisations.

(5) In making regulations under paragraph (1), the Treasury must also have regard, in addition to any other matters they consider relevant, to whether the FCA, and where relevant the PRA, have established effective cooperation arrangements with the competent authorities of the country or territory.

- (6) When considering whether to make, vary or revoke regulations under paragraph (1), the Treasury may, by making a request in writing to the FCA, require the FCA to prepare a report on—
- (a) the law and practice of a country or territory outside the United Kingdom, or particular aspects of such law and practice;
 - (b) the arrangements mentioned in paragraph (5),
- in relation to securitisations of descriptions specified in the request.
- (7) If the Treasury request a report under paragraph (6), the FCA must—
- (a) consult the PRA when preparing the report, and
 - (b) provide the Treasury with the report within such reasonable period as may be specified in the request or such other period as may be agreed with the Treasury.
- (8) Regulations under this regulation are to be made by statutory instrument.
- (9) Such regulations may—
- (a) contain incidental, supplemental, consequential and transitional provision, and
 - (b) make different provision for different purposes.
- (10) Regulations under this regulation are subject to annulment in pursuance of a resolution of either House of Parliament.

PART 5

Securitisation repositories

Registration of a securitisation repository

14.—(1) A body corporate may apply to the FCA for registration under this regulation as a securitisation repository by means of which originators, sponsors or securitisation special purpose entities make information available in accordance with FCA securitisation rules or PRA securitisation rules.

(2) A trade repository may submit an application for an extension of registration to the FCA with a view to its registration as a securitisation repository.

(3) To be eligible to be registered under this regulation, a body corporate must—

- (a) be established in the United Kingdom,
- (b) apply procedures to verify the completeness and consistency of the information made available to it under FCA or PRA securitisation rules, and
- (c) meet the requirements provided for in Articles 78, 79 and 80(1) to (3), (5) and (6) of EMIR(33).

(4) For the purposes of this Part, Articles 78, 79 and 80 of EMIR have effect in relation to a securitisation repository as they have effect in relation to a trade repository, but as if—

- (a) any reference to EMIR were a reference to this Part, and
- (b) the reference in Articles 78 and 80 to Article 9 of EMIR were a reference to FCA securitisation rules.

(5) In this regulation—

“FCA securitisation rules” means—

- (a) designated activity rules made by virtue of regulation 5, and

(33) Article 78 was amended by section 40(3) of the Financial Services Act 2021; Article 80 was amended by S.I. 2019/1416.

- (b) rules made by the FCA under section 137A of FSMA 2000 in relation to securitisation; “PRA securitisation rules” means rules made by the PRA under section 137G of FSMA 2000 in relation to securitisation;
- “trade repository” means a person who centrally collects and maintains records of derivatives and who is registered by the FCA as such under EMIR.

Application for registration

15.—(1) An application for registration, or for an extension of registration, under regulation 14 must—

- (a) be made in such manner as the FCA may direct, and
- (b) contain, or be accompanied by, such information as the FCA may reasonably require.

(2) On receiving an application for registration or for an extension of registration under regulation 14, the FCA must assess whether the application is complete within the period of 20 working days beginning with the receipt of the application.

(3) Where the application is not complete, the FCA must set a deadline by which the applicant is to provide additional information.

(4) After having assessed an application as complete, the FCA must notify the applicant accordingly.

Examination of application

16. The FCA must, within the period of 40 working days beginning with the day on which the notification referred to in regulation 15(4) is made—

- (a) examine the application for registration, or for an extension of registration, based on the compliance of the applicant with this Part,
- (b) make a decision accepting or refusing registration or an extension of registration, and
- (c) give reasons for its decision.

Register of securitisation repositories

17.—(1) The FCA must maintain a register of securitisation repositories in accordance with this Part.

(2) The FCA must—

- (a) publish the register on its official website and make it available for public inspection, and
- (b) update the register on a regular basis.

Changes to conditions for registration

18. A securitisation repository must, without undue delay, notify the FCA of any material changes affecting its eligibility for registration.

Withdrawal of registration

19.—(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 FSMA 2000.

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

Notification of decision

20.—(1) On making a decision referred to in regulation 16(b) or 19, the FCA must notify its decision to the applicant or securitisation repository concerned.

(2) A refusal of an application for registration or an extension of registration under regulation 16(b) comes into effect on the fifth working day after it is made.

(3) A withdrawal of registration under regulation 19(3) takes effect—

- (a) immediately upon the making 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.

(4) A decision to withdraw registration on the FCA’s own initiative under regulation 19(1) or (2) 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 to take effect immediately or on that date.

(5) If the decision referred to in regulation 16(b) or 19 is—

- (a) to refuse the application for registration or an extension of registration,
- (b) to exercise the FCA’s power under regulation 19(1) or (2) 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 regulation 19(3) to withdraw the registration of the securitisation repository,

the FCA must give the applicant or securitisation repository a written notice.

(6) A written notice under paragraph (5) 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 applicant or 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 Tribunal within such period as may be specified in the notice, and
- (e) indicate the procedure on a reference to the Tribunal.

(7) If the applicant or 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 applicant or securitisation repository and review the original decision.

(8) On a review under paragraph (7), the FCA may make any decision (“the new decision”) it could have made on the application.

(9) The FCA must give the applicant or securitisation repository written notice of its decision on the review.

(10) This paragraph applies to a decision—

- (a) to maintain a decision to refuse an application for registration or for an extension of registration, made under regulation 16(b),
- (b) to refuse to revoke a decision made under regulation 19(1) or (2) 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 regulation 19(3) to withdraw the registration of the securitisation repository.

(11) A written notice in relation to a decision to which paragraph (10) 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 applicant or 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.

(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.

Tribunal

21.—(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 or to extend its registration under regulation 16(b),
- (b) exercise its power under regulation 19(1) or (2) to withdraw the registration of a securitisation repository, or
- (c) refuse the securitisation repository's application under regulation 19(3) to withdraw its registration.

(2) Where there is a review under regulation 20(7), paragraph (1) applies only in relation to the FCA's decision in response to that review.

Power of FCA to make rules in relation to securitisation repositories

22.—(1) The FCA may make such rules applying to securitisation repositories registered with the FCA—

- (a) with respect to the carrying on by them of securitisation repository activities, or
- (b) with respect to the carrying on by them of activities which are not securitisation repository activities,

as appear to the FCA to be necessary or expedient for the purpose of advancing one or more of its operational objectives set out in section 1B(3) of FSMA 2000.

(2) In paragraph (1) "securitisation repository activities" means the activities of centrally collecting and maintaining records of securitisations.

(3) The rules may make provision applying to securitisation repositories even though there is no relationship between the securitisation repositories to whom the rules will apply and the persons whose interests will be protected by the rules.

(4) The rules may contain requirements which take into account, in the case of a securitisation repository which is a member of a group, any activity of another member of the group.

(5) In paragraph (4) “group” has the same meaning as in FSMA 2000 (see section 421 of that Act).

Power of FCA to impose requirements

23.—(1) If the FCA considers that—

- (a) a securitisation repository has contravened, or is likely to contravene, a requirement imposed by or under this Part, or
- (b) it is desirable to exercise the power in order to advance one or more of its operational objectives set out in section 1B(3) of FSMA 2000,

it may impose, for such period as it considers appropriate, such requirements as it considers necessary or expedient in relation to the carrying on of securitisation repository activities, as defined in regulation 22(2).

(2) A requirement may, in particular, be imposed so as to require a securitisation repository to take, or refrain from taking, specified action.

(3) The FCA may—

- (a) withdraw a requirement, or
- (b) vary a requirement so as to reduce the period for which it has effect or otherwise to limit its effect.

(4) The imposition of the requirement takes effect—

- (a) immediately, if the notice given under sub-paragraph (6) states that that is the case, or
- (b) on such date as may be specified in the notice.

(5) The imposition of a requirement 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 imposition of the requirement to take effect immediately, or on that date.

(6) If the FCA proposes to impose, or imposes a requirement, it must give the securitisation repository written notice.

(7) The notice must—

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

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

(9) If, having considered any representations made by the securitisation repository, the FCA decides—

- (a) to impose the requirement in the way proposed, or

(b) if the requirement has been imposed, not to rescind the imposition of the requirement, it must give the securitisation repository written notice.

(10) If, having considered any representations made by the securitisation repository, the FCA decides—

- (a) not to impose the requirement in the way proposed,
- (b) to impose a different requirement, or
- (c) to rescind a requirement which has effect,

it must give the securitisation repository written notice.

(11) A notice under paragraph (9) must inform the securitisation repository of its right to refer the matter to the Tribunal.

(12) A notice under paragraph (10)(b) must comply with paragraph (7).

(13) If a notice informs the securitisation repository of its right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(14) A securitisation repository may refer to the Tribunal the FCA's decision to impose a requirement under this regulation.

PART 6

Registration of third party verifying STS compliance

Interpretation of Part 6

24. In this Part—

“third party”, in relation to a securitisation, means a person other than the originator, sponsor or securitisation special purpose entity;

“third party verification service” means a service provided by a third party of assessing the compliance of a securitisation with the STS criteria;

“third party verifier” means a person registered to provide a third party verification service.

Third party verifying STS compliance

25.—(1) A person providing a third party verification service must be registered by the FCA under this Part.

(2) The FCA must grant an application for registration to provide a third party verification service if all the following conditions are met—

- (a) the person only charges non-discriminatory and cost-based fees to the originators, sponsors or securitisation special purpose entities involved in the securitisations which the person assesses without charging different fees depending on, or correlated to, the results of its assessment;
- (b) the person is neither a regulated entity as defined in regulation 1(2) of the Financial Conglomerates and Other Financial Groups Regulations 2004⁽³⁴⁾ nor a credit rating agency as defined in Article 3(1) of Regulation (EU) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies⁽³⁵⁾, and

⁽³⁴⁾ S.I. 2004/1862. The definition of “regulated entity” was substituted by S.I. 2019/264.

⁽³⁵⁾ EUR 2009/1060. Article 3(1) was substituted by S.I. 2019/266.

- the performance of the person's other activities does not compromise the independence or integrity of its assessment;
- (c) the person does not provide any form of advisory, audit or equivalent service to the originator, sponsor or securitisation special purpose entity involved in the securitisations which the third party assesses;
 - (d) the members of the management body of the person have professional qualifications, knowledge and experience that are adequate for the task of the person and they are of good repute and integrity;
 - (e) the management body of the person includes at least one third, but no fewer than two, independent directors;
 - (f) the person takes all necessary steps to ensure that the verification of compliance with the STS criteria is not affected by any existing or potential conflicts of interest or business relationship involving the person, its shareholders or members, managers, employees or any other individuals whose services are placed at the disposal or under the control of the person, and to that end—
 - (i) the person must 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;
 - (ii) potential or existing conflicts of interest which have been identified must be eliminated or mitigated and disclosed without delay;
 - (iii) the person must establish, maintain, enforce and document adequate procedures and processes to ensure the independence of the assessment of compliance with the STS criteria;
 - (iv) the person must periodically monitor and review those policies and procedures in order to evaluate their effectiveness and assess whether it is necessary to update them;
 - (g) the person can demonstrate that it has proper operational safeguards and internal processes that enable it to assess compliance with the STS criteria.
- (3) A third party verifier must notify the FCA without delay of—
- (a) any material changes to the information provided in respect of paragraph (2), and
 - (b) any other changes that could reasonably be considered to affect the assessment by the FCA of compliance by the third party verifier with the conditions in that paragraph.

Application for registration to provide third party verification service

- 26.**—(1) An application for registration to provide a third party verification service must—
- (a) be made in such manner as the FCA may direct, and
 - (b) contain, or be accompanied by, such information as the FCA may reasonably require.
- (2) At any time after the application is received and before it is determined, the FCA may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.
- (3) The FCA may give different directions, and may impose different requirements, in relation to different applications or categories of application.
- (4) The FCA may require an applicant to provide information which the applicant is required to provide to it under this Part in such form, or to verify it in such a way, as the FCA may direct.

Determination of application for registration to provide third party verification service

27.—(1) The FCA must determine an application for registration to provide a third party verification service before the end of the period of six months beginning with the date on which it received the completed application.

(2) The FCA may determine an incomplete application if it considers it appropriate to do so, and it must in any event determine such an application within 12 months beginning with the date on which it received the application.

(3) The applicant may withdraw its application, by giving the FCA notice, at any time before the FCA determines it.

(4) If the FCA decides to grant an application it must give the applicant notice of its decision specifying the date on which the registration takes effect.

Register of third party verifiers

28.—(1) The FCA must maintain a register of third party verifiers in accordance with this Part.

(2) The FCA must—

- (a) publish the register on its official website and make it available for public inspection, and
- (b) update the register on a regular basis.

Temporary withdrawal of registration to provide third party verification service

29.—(1) The FCA may decide to withdraw temporarily the registration of a third party verifier if it appears to the FCA that—

- (a) the third party verifier is materially non-compliant with regulation 25(2),
- (b) the third party verifier has failed, during a period of at least 12 months, to provide a third party verification service,
- (c) the third party verifier has obtained the registration to provide a third party verification service through false statements or other irregular means;
- (d) the third party verifier has failed to comply with regulation 25(3), or
- (e) it is desirable to do so to advance one or more of the FCA's operational objectives set out in section 1B(3) of FSMA 2000.

(2) The FCA may—

- (a) revoke the temporary withdrawal imposed under paragraph (1), or
- (b) vary the period for which the temporary withdrawal has effect.

Temporary withdrawal of registration to provide third party verification service: procedure

30.—(1) When the FCA exercises its functions under regulation 29, its decision takes effect—

- (a) immediately, if the notice given under paragraph (3) states that that 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.

(2) A decision of the FCA made under regulation 29 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 this power, reasonably considers that it is necessary for the decision to take effect immediately (or on that date).

(3) If the FCA proposes to exercise, or exercises, its functions under regulation 29, it must give the third party verifier written notice.

(4) The notice must—

- (a) give details of the temporary withdrawal, or the revocation of the temporary withdrawal, or the variation of the temporary withdrawal, including the period of the temporary withdrawal,
- (b) state the FCA's reasons for the temporary withdrawal, or the revocation of the temporary withdrawal or the variation of the temporary withdrawal,
- (c) inform the third party verifier that they may make representations to the FCA within such period as may be specified in the notice (whether or not they referred the matter to the Tribunal),
- (d) inform the third party verifier when the temporary withdrawal, or the revocation of the temporary withdrawal or the variation of the temporary withdrawal, is to take effect, and
- (e) inform the third party verifier of their right to refer the matter to the Tribunal and provide an indication of the procedure for such a reference.

(5) The FCA may extend the period allowed in the notice given under paragraph (4)(c) for making representations.

(6) If, having considered any representations made by the third party verifier to whom the notice has been given under paragraph (3), the FCA decides—

- (a) to withdraw temporarily, or revoke or vary the temporary withdrawal of, the third party verifier's registration in the way proposed,
- (b) not to withdraw temporarily, or revoke or vary the temporary withdrawal of, the third party verifier's registration in the way proposed,
- (c) to revoke the temporary withdrawal or variation of the temporary withdrawal which has taken effect,
- (d) if the temporary withdrawal or variation of the temporary withdrawal has taken effect, not to revoke the temporary withdrawal or variation of the temporary withdrawal, or
- (e) to withdraw temporarily or vary the period of a withdrawal in a different way,

it must give the third party verifier written notice of its decision.

(7) A notice under paragraph (6)(a), (d) or (e) must inform the third party verifier of their right to refer the matter to the Tribunal and provide an indication of the procedure for such a reference.

(8) For the purposes of paragraph (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8) of FSMA 2000.

(9) Where the registration of a third party verifier is temporarily withdrawn, the FCA must as soon as practicable update the register accordingly.

Withdrawal of registration to provide third party verification service on initiative of FCA

31.—(1) The FCA may withdraw a registration to provide a third party verification service if it appears to the FCA that—

- (a) the third party verifier is materially non-compliant with regulation 25(2),
- (b) the third party verifier has failed, during a period of at least 12 months, to provide a third party verification service,
- (c) the third party verifier has obtained the registration to provide third party verification services through false statements or other irregular means,
- (d) the third party verifier has failed to comply with regulation 25(3), or

(e) it is desirable to do so to advance one or more of the FCA’s operational objectives set out in section 1B(3) of FSMA 2000.

(2) Where the period for a reference to the Tribunal has expired without a reference being made, the FCA must as soon as practicable update the register accordingly.

Withdrawal of registration to provide third party verification service at request of third party verifier

32.—(1) The FCA may, on the application of a third party verifier, withdraw its registration to provide a third party verification service.

(2) A request for withdrawal of a person’s registration under this regulation must be made in such manner as the FCA may direct.

(3) The FCA may refuse an application under this regulation if it appears to it that it is desirable to do so in order to advance any of its operational objectives set out in section 1B(3) of FSMA 2000.

(4) An application under paragraph (1) must be determined by the FCA before the end of the period of 6 months beginning with the date on which it received the completed application.

(5) The FCA may determine an incomplete application if it considers it is appropriate to do so, and it must in any event determine such an application within 12 months beginning with the date on which it received the application.

(6) The applicant may withdraw its application, by giving the FCA notice, at any time before the FCA determines it.

(7) If the FCA decides to grant an application, it must give the applicant notice of its decision specifying the date on which the withdrawal of the registration takes effect, and as soon as practicable update the register referred to in regulation 28 accordingly.

PART 7

Due-diligence requirements

Rules relating to due-diligence requirements of institutional investors

33.—(1) The appropriate regulator must make general rules requiring a relevant institutional investor to carry out due diligence—

- (a) before holding a securitisation position, and
- (b) while holding a securitisation position.

(2) In this regulation—

“appropriate regulator”—

- (a) in relation to a relevant institutional investor which is a PRA-authorised person, means the PRA;
- (b) in relation to other relevant institutional investors, means the FCA;

“general rules”—

- (a) in relation to the FCA, has the meaning given in section 137A(2) of FSMA 2000;
- (b) in relation to the PRA, has the meaning given in section 137G(2) of FSMA 2000;

“relevant institutional investor” means an institutional investor which is an authorised person and which is not—

- (a) the trustees or managers of an occupational pension scheme, or

- (b) the originator, sponsor or original lender in that securitisation.

Due-diligence requirements of small registered UK AIFMs as institutional investors

34.—(1) The FCA must make rules requiring a small registered UK AIFM to carry out due diligence—

- (a) before holding a securitisation position, and
 - (b) while holding a securitisation position.
- (2) Rules under paragraph (1) may require a small registered UK AIFM—
- (a) before holding a securitisation position—
 - (i) to verify specified matters relating to the securitisation position, and
 - (ii) to carry out an assessment of the risks involved in holding the securitisation position, having regard to specified matters;
 - (b) while holding a securitisation position, to take specified measures to monitor its performance and the risks involved in continuing to hold it.
- (3) References in paragraph (1) and (2) to a securitisation position do not include references to a securitisation position in relation to which the small registered UK AIFM is the originator, sponsor or original lender.

(4) In paragraph (2) “specified” means specified in the rules.

(5) For the purposes of the provisions of the Alternative Investment Fund Managers Regulations 2013 listed in paragraph (6), rules made by the FCA under paragraph (1) are to be taken to be implementing provisions as defined by regulation 2 of those Regulations.

(6) Those provisions are—

- (a) regulation 17 (grounds for revocation of registration);
- (b) regulation 19 (grounds for suspension of registration);
- (c) regulation 21 (disclosure obligations);
- (d) regulation 22 (power of direction).

(7) In the provisions of FSMA 2000 listed in paragraph (8), any reference (however expressed) to provision made by, or a requirement imposed by, the Alternative Investment Fund Managers Regulations 2013 is to be taken to include a reference to provision made by, or a requirement imposed by, rules under paragraph (1).

(8) Those provisions are—

- (a) subsection (2)(aa) of section 1L**(36)** (supervision, monitoring and enforcement);
- (b) subsection (4)(ja)(ii) of section 168**(37)** (appointment of persons to carry out investigations in particular cases);
- (c) subsections (2)(c) and (6)(b) of section 204A**(38)** (meaning of “relevant requirement” and “appropriate regulator”);
- (d) subsection (6)(a)(iii) of section 380**(39)** (injunctions);
- (e) subsection (9)(a)(iii) of section 382**(40)** (restitution orders);

(36) Section 1L was inserted by section 6(1) of the Financial Services Act 2012; paragraph (aa) of subsection (2) was inserted by [S.I. 2013/1773](#).

(37) In section 168(4), paragraph (ja) was inserted by [S.I. 2013/1773](#).

(38) Section 204A was inserted by Schedule 9 to the Financial Services Act 2012; subsection (2)(c) was inserted by [S.I. 2013/1773](#) and subsection (6) was substituted by [S.I. 2016/225](#).

(39) Section 380(6)(a)(iii) was inserted by [S.I. 2013/1773](#) and amended by [S.I. 2015/1755](#).

(40) Section 382(9)(a)(iii) was inserted by [S.I. 2013/1773](#).

- (f) subsection (1A)(b) of section 398(41) (misleading FCA or PRA: residual cases).

PART 8

Monitoring, disciplinary measures and procedures

Interpretation of Part 8

35. In this Part—

“regulated person” means a person who is not an authorised person and is—

- (a) an original lender,
- (b) an originator,
- (c) a person engaged in the activity specified in regulation 4(1)(b),
- (d) a sponsor,
- (e) an SSPE,
- (f) a third party verifier, or
- (g) a securitisation repository;

“a regulator” means the FCA or the PRA;

“relevant requirement” means a requirement imposed—

- (a) by designated activity rules made by virtue of regulation 5,
- (b) by a direction under section 71O of FSMA 2000 given by virtue of regulation 6,
- (c) by or under Part 4 (simple, transparent and standardised securitisations), Part 5 (securitisation repositories) or Part 6 (registration of third party verifying STS compliance),
- (d) by regulation 38 in a case where the temporary prohibition was imposed by the FCA, or
- (e) by the FCA under any other provision of these Regulations or under a provision of FSMA 2000 applied by these Regulations.

Monitoring and enforcement by FCA

36.—(1) The FCA must maintain arrangements designed to enable it to determine whether regulated persons are complying with relevant requirements.

(2) The FCA must also maintain arrangements for enforcing compliance by regulated persons with relevant requirements.

Temporary prohibition relating to management functions

37.—(1) If the FCA considers that an individual has contravened, or has been knowingly concerned in the contravention of, a relevant requirement, the FCA may impose a temporary prohibition on that individual from holding an office or position involving responsibility for taking decisions about the management of an originator, sponsor or SSPE.

(2) If the PRA considers that an individual has contravened, or has been knowingly concerned in the contravention of—

- (a) PRA securitisation rules,

- (b) regulation 38, in a case where the temporary prohibition was imposed by the PRA, or
- (c) a requirement imposed under section 55M of FSMA 2000⁽⁴²⁾ (imposition of requirements by PRA) which relates to securitisations,

the PRA may impose a temporary prohibition on that individual from holding an office or position involving responsibility for taking decisions about the management of an originator, sponsor or SSPE.

(3) A temporary prohibition imposed under paragraph (1) or (2) expires at the end of such period as the regulator imposing it may specify, but the imposition of a temporary prohibition does not affect the regulator's power to impose a further temporary prohibition under that paragraph.

(4) A temporary prohibition under paragraph (1) or (2) may relate to the management of—

- (a) a named originator, sponsor or SSPE,
- (b) an originator, sponsor or SSPE of a specified description, or
- (c) any originator, sponsor or SSPE.

(5) A regulator may revoke a temporary prohibition imposed by it under this regulation, or vary it so as to reduce the period for which it has effect.

(6) In this regulation, "PRA securitisation rules" means rules made by the PRA under section 137G of FSMA 2000 which make provision of the kind mentioned in regulation 5(2) in relation to securitisations.

Temporary prohibition relating to management functions: obligations on originator, sponsor or SSPE

38. An originator, sponsor or SSPE must take reasonable care to ensure that no individual holds an office or position involving responsibility for taking decisions about the management of that entity in contravention of a temporary prohibition imposed under regulation 37(1) or (2).

Imposition of temporary ban on STS notifications

39.—(1) If the FCA considers that—

- (a) an originator, sponsor or SSPE has failed to meet the requirements of designated activity rules made by virtue of regulation 5, so far as those rules relate to STS securitisations, or
- (b) an originator or sponsor has made a misleading STS notification,

the FCA may, for such period as it considers appropriate, temporarily ban the originator or sponsor from making an STS notification.

(2) The FCA may—

- (a) revoke a temporary ban imposed under paragraph (1), or
- (b) vary the period for which the temporary ban has effect.

(3) The FCA must consult the PRA before imposing a temporary ban on an originator or sponsor who is a PRA-authorized person, or varying such a ban so as to extend the period for which it has effect.

Procedure for imposition, variation or revocation of a temporary ban on STS notifications

40.—(1) Where the FCA exercises its functions under regulation 39, its decision takes effect—

- (a) immediately, if the notice under paragraph (3) states that is the case,

⁽⁴²⁾ Section 55M was inserted by section 11(2) of the Financial Services Act 2012. There is an amendment that is not relevant.

- (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.
- (2) A decision of the FCA made under regulation 39 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 this power, reasonably considers that it is necessary for the decision to take effect immediately (or on that date).
- (3) If the FCA proposes to exercise, or exercises, its functions under regulation 39, it must give the originator or sponsor a written notice.
- (4) The notice must—
- (a) give details of the temporary ban or variation,
 - (b) state the FCA's reasons for the temporary ban, or the revocation of the temporary ban or the variation of the temporary ban,
 - (c) inform the originator or sponsor that they may make representations to the FCA within such period as may be specified in the notice (whether or not the originator or sponsor has referred the matter to the Tribunal),
 - (d) inform the originator or sponsor when the temporary ban, or the revocation or variation of the temporary ban, takes effect, and
 - (e) inform the originator or sponsor of their right to refer the matter to the Tribunal and an indication of the procedure for such a reference.
- (5) The FCA may extend the period allowed under the notice for making representations.
- (6) If, having considered any representations made by a person to whom the notice was given, the FCA decides—
- (a) to impose the temporary ban, or revoke or vary the temporary ban, in the way proposed,
 - (b) not to impose the temporary ban, or revoke or vary the temporary ban, in the way proposed,
 - (c) to revoke the temporary ban, or the variation of the temporary ban, which has taken effect,
 - (d) if the temporary ban has been imposed or varied, not to revoke the temporary ban or variation of the temporary ban, or
 - (e) to impose or vary the temporary ban in a different way,
- it must give the person written notice.
- (7) A notice given under paragraph (6)(a), (d) or (e) must inform the person to whom it is given of the person's right to refer the matter to the Tribunal and provide an indication of the procedure for such a reference.
- (8) For the purposes of paragraph (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8) of FSMA 2000.

Public censure

- 41.**—(1) If the FCA considers that—
- (a) a regulated person has contravened a relevant requirement,
 - (b) a member of the management body of a regulated person, other than a securitisation repository, was knowingly concerned in the contravention by the regulated person of a relevant requirement,
 - (c) another member of the senior management of a regulated person, other than a securitisation repository, was knowingly concerned in the contravention by the regulated person of a relevant requirement, or

(d) a regulated person has failed to comply with regulation 38 as an originator, sponsor or SSPE, in a case where the temporary prohibition was imposed by the FCA, the FCA may publish a statement to that effect.

(2) If a regulator considers that an individual on whom a temporary prohibition has been imposed under regulation 37 by that regulator has breached the prohibition, the regulator may publish a statement to that effect.

(3) If the PRA considers that a regulated person has failed to comply with regulation 38 as an originator, sponsor or SSPE, in a case where the temporary prohibition was imposed by the PRA, the PRA may publish a statement to that effect.

Financial penalties

42.—(1) If the FCA considers that—

- (a) a regulated person has contravened a relevant requirement,
- (b) a member of the management body of a regulated person, other than a securitisation repository, was knowingly concerned in the contravention by the regulated person of a relevant requirement,
- (c) another member of the senior management of a regulated person, other than a securitisation repository, was knowingly concerned in the contravention by the regulated person of a relevant requirement, or
- (d) a regulated person has failed to comply with regulation 38 as an originator sponsor or SSPE, in a case where the temporary prohibition was imposed by the FCA,

the FCA may impose a penalty of such amount as it considers appropriate.

(2) If a regulator decides that an individual on whom a temporary prohibition has been imposed under regulation 37 by that regulator has breached the prohibition, the regulator may impose a penalty of such amount as it considers appropriate on that individual.

(3) If the PRA considers that a regulated person has failed to comply with regulation 38 as an originator, sponsor or SSPE, in a case where the temporary prohibition was imposed by the PRA, the PRA may impose a penalty of such amount as it considers appropriate.

(4) A penalty imposed by a regulator under this regulation is payable to that regulator and may be recovered as a debt owed to that regulator.

Warning notice

43.—(1) If the FCA proposes—

- (a) to refuse under regulation 27 an application under regulation 26 for registration as a third party verification service,
- (b) to withdraw the registration of a third party verification service under regulation 31,
- (c) to refuse an application to withdraw a person's registration to provide a third party verification service under regulation 32,
- (d) to impose a temporary prohibition under regulation 37,
- (e) to publish a statement in respect of a person under regulation 41,
- (f) to impose a penalty on a person under regulation 42,

it must give the person a warning notice.

(2) If the PRA proposes—

- (a) to impose a temporary prohibition under regulation 37,

- (b) to publish a statement in respect of a person under regulation 41,
- (c) to impose a penalty on a person under regulation 42,

it must give the person a warning notice.

(3) A warning notice about a proposal to impose a temporary prohibition in relation to management functions under regulation 37 must set out the terms of the proposed prohibition.

(4) A warning notice about a proposal to publish a statement under regulation 41 must set out the terms of the statement.

(5) A warning notice about a proposal to impose a penalty under regulation 42 must state the amount of the proposed penalty.

(6) A warning notice must inform the person concerned that the person may make representations to the regulator who gave the notice within such period as may be specified in the notice (whether or not the person concerned has referred the matter to the Tribunal).

Decision notice

44.—(1) If, having considered any representations made in response to the warning notice, the FCA decides—

- (a) to refuse under regulation 27 an application under regulation 26 for registration as a third party verification service,
- (b) to withdraw a person’s registration to provide a third party verification service under regulation 31,
- (c) to refuse an application to withdraw a person’s registration to provide a third party verification service under regulation 32,
- (d) to impose a temporary prohibition under regulation 37 (whether or not in the terms proposed),
- (e) to publish a statement in respect of a person under regulation 41 (whether or not in the terms proposed),
- (f) to impose a penalty on a person under regulation 42 (whether or not of the amount proposed),

the FCA must give the person concerned a decision notice.

(2) If, having considered any representations made in response to the warning notice, the PRA decides—

- (a) to impose a temporary prohibition under regulation 37,
- (b) to publish a statement in respect of a person under regulation 41,
- (c) to impose a penalty on a person under regulation 42,

it must give the person a decision notice.

(3) A decision notice about a decision to impose a temporary prohibition in relation to management functions under regulation 37 must set out the terms of the prohibition.

(4) A decision notice about a decision to publish a statement under regulation 41 must set out the terms of the statement.

(5) A decision notice about a decision to impose a penalty under regulation 42 must state the amount of the penalty.

(6) After a statement under regulation 41 (public censure) is published, the regulator that published it must send a copy of it to the person concerned and to any person to whom a copy of

the decision notice is given under section 393(4) of FSMA 2000⁽⁴³⁾ (third party rights), as applied by Schedule 1.

Consultation in relation to certain enforcement action

45.—(1) The FCA must consult the PRA before giving a warning notice under regulation 43(1) (a), (b), (c), (e) or (f) or a decision notice under regulation 44(1)(a) (b), (c), (e) or (f) in relation to a person who—

- (a) is a PRA-authorized person, or
- (b) has a qualifying relationship with a PRA-authorized person.

(2) The FCA must consult the PRA before giving a warning notice under regulation 43(1)(d) or a decision notice under regulation 44(1)(d) if as a result of the prohibition in question an individual would be prohibited from performing a management function in relation to a PRA-authorized person.

(3) The PRA must consult the FCA before giving a warning notice under regulation 43(2).

(4) A person has a qualifying relationship with a PRA-authorized person for the purposes of this regulation if the person is a member of the PRA-authorized person's immediate group.

(5) In this regulation "immediate group" has the meaning given in section 421ZA of FSMA 2000⁽⁴⁴⁾.

Statement of policy

46.—(1) Each regulator must prepare and issue a statement of policy with respect to—

- (a) the imposition of a prohibition under regulation 37,
- (b) the period of a prohibition under that regulation,
- (c) the imposition of penalties under regulation 42, and
- (d) the amount of penalties under that regulation.

(2) The policy must require the regulator, in determining the amount of the 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 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;
- (f) the level of co-operation by the person with the regulator (without prejudice to the need to ensure that the person accounts for or makes good any profit sustained 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 42.

(3) A regulator may at any time alter or replace a statement issued by it under this regulation.

(4) If a statement issued under this regulation is altered or replaced by a regulator, the regulator must issue the altered or replacement statement.

⁽⁴³⁾ Section 393(4) was amended by paragraph 32 of Schedule 9 to the Financial Services Act 2012.

⁽⁴⁴⁾ Section 421ZA was inserted by section 48(2) of the Financial Services Act 2012.

(5) A regulator must, without delay, give the Treasury a copy of any statement which it issues under this regulation.

(6) A statement issued under this regulation by a regulator must be published by the regulator in the way appearing to the regulator to be best calculated to bring it to the attention of the public.

(7) The regulator may charge a reasonable fee for providing a person with a copy of the statement.

(8) In exercising, or deciding whether to exercise, its power under regulation 37 (temporary prohibition relating to management functions) or under regulation 42 (financial penalties) in the case of any particular contravention, a regulator must have regard to any statement of policy published by it under this regulation and in force at the time when the contravention in question occurred.

Statement of policy: procedure

47.—(1) Before a regulator issues a statement under regulation 46, the regulator must publish a draft of the proposed statement in the way appearing to the regulator to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by a notice that representations about the proposed statement may be made to the regulator within a specified time.

(3) Before issuing the proposed statement, the regulator must have regard to any representations made to it in accordance with paragraph (2).

(4) If the regulator issues the proposed statement, it must publish an account, in general terms, of—

- (a) the representations made to it in accordance with paragraph (2), and
- (b) its response to them.

(5) If the statement differs from the draft published under paragraph (1) in a way which is, in the opinion of the regulator, significant, the regulator must (in addition to complying with paragraph (4)) publish details of the difference.

(6) The regulator may charge a reasonable fee for providing a person with a copy of a draft published by it under paragraph (1).

Restriction on penalties

48.—(1) A person who is convicted of an offence under section 398 of FSMA 2000 as applied by paragraph 13 of Schedule 1 to these Regulations is not subsequently liable to a penalty under regulation 42 (financial penalties) in respect of the same act or omission.

(2) A person on whom a penalty has been imposed under regulation 42 (financial penalties) is not subsequently liable for an offence under section 398 of FSMA 2000 as applied by paragraph 13 of Schedule 1 to these Regulations in respect of the same act or omission.

Right to refer matters to Tribunal

49.—(1) A person to whom a decision notice is given under regulation 44 may refer the matter to the Tribunal.

(2) If the FCA decides temporarily to withdraw a registration to provide a third party verification service under regulation 29, or varies the details of the temporary withdrawal so as to extend the period for which it has effect, the person concerned may refer the matter to the Tribunal.

(3) If the FCA imposes a temporary ban under regulation 39, or varies such a ban so as to extend the period for which it has effect, the person concerned may refer the matter to the Tribunal.

PART 9

Application of provisions of FSMA 2000 etc and consequential amendments

Amendment or application with modifications of provisions of FSMA 2000 etc

50. In Schedule 1—

- (a) Part 1 contains amendments of FSMA 2000;
- (b) Part 2 applies with modifications provisions of FSMA 2000 and secondary legislation made under it.

Amendments of other legislation

51. Schedule 2 contains amendments of other legislation, including consequential amendments.

PART 10

Saving and transitional provisions

Pre-2019 securitisations

52.—(1) In relation to pre-2019 securitisations—

- (a) Part 2 (designated activities) applies only for the purposes of enabling the FCA by rules or directions to impose, on persons other than PRA-authorized persons, requirements with respect to the matters mentioned in regulation 5(2), other than requirements with respect to STS criteria or STS notifications, and
- (b) Part 4 (simple, transparent and standardised securitisations) does not apply.

(2) The revocation of the EU Securitisation Regulation 2017 by section 1(1) of, and Schedule 1 to, the Financial Services and Markets Act 2023 does not affect the continued application in relation to pre-2019 securitisations of paragraphs 2 to 4A of Article 43 of that Regulation (which relate to the use of the designation “STS” or “simple, transparent and standardised”), as those paragraphs had effect immediately before the main commencement day.

(3) The provisions of Part 8 of these Regulations, of FSMA 2000, and of FSMA 2000 as applied by Schedule 1 to these Regulations, apply in relation to a contravention on or after the main commencement day of Article 43(2) of the EU Securitisation Regulation 2017, as remaining in force by virtue of paragraph (2), as those provisions apply in relation to a contravention of regulation 12 (use of STS designation).

(4) If the FCA or the PRA, in the exercise of any of its rule-making powers, makes rules which require an investor to apply in relation to pre-2019 securitisations—

- (a) the due diligence requirements contained in the provisions specified in Article 43(5) of the EU Securitisation Regulation 2017, subject to the modifications specified there, or
- (b) the requirements contained in the provisions specified in Article 43(6) of the EU Securitisation Regulation 2017, subject to the modifications specified there,

the revocation of the EU Securitisation Regulation 2017 by section 1(1) of, and Schedule 1 to, the Financial Services and Markets Act 2023 does not affect the continued exercise by the FCA or the PRA (as the case may be) for the purposes of the rules in question of any functions that it had immediately before the main commencement day under the provisions so specified as so modified.

(5) In this regulation “pre-2019 securitisations” means—

- (a) securitisations the securities of which were issued before 1 January 2019, or
- (b) securitisations in relation to which the following conditions are met—
 - (i) the securitisations do not involve the issue of securities,
 - (ii) the initial securitisation positions of the securitisations were created before 1 January 2019, and
 - (iii) no new securitisations positions of the securitisations have been created on or after that day.

Further transitional provisions

53. Schedule 3 contains further transitional provisions.

Date

name
name
Two of the Lords Commissioners of His
Majesty's Treasury

SCHEDULE 1

Regulation 50

Amendment, or application with modifications, of provisions
of FSMA 2000 and secondary legislation made under it

PART 1

Amendments of FSMA 2000

1. FSMA 2000 is amended as follows.
2. In section 39(45) (exemption of appointed representatives), in subsection (4)—
 - (a) omit the “or” immediately following paragraph (a), and
 - (b) after that paragraph insert—
 - “(aa) a provision contained in or made under the Securitisation Regulations 2023, or”.
3. In section 66A(46) (misconduct: action by the FCA), in subsection (4)—
 - (a) omit the “or” immediately following paragraph (ab), and
 - (b) after that paragraph insert—
 - “(ac) imposed by or under the Securitisation Regulations 2023, or”.
4. In section 66B(47) (misconduct: action by the PRA), in subsection (4)—
 - (a) omit the “or” immediately following paragraph (a), and
 - (b) after that paragraph insert—
 - “(aa) imposed by or under the Securitisation Regulations 2023, or”.
5. In section 168(48) (appointment of persons to carry out investigations in particular cases), in subsection (4), after paragraph (ic) insert—
 - “(id) a person may have contravened any provision made by or under the Securitisation Regulations 2023;”.
- 6.—(1) Section 204A(49) (meaning of “relevant requirement” and “appropriate regulator” for purposes of Part 14) is amended as follows.
 - (2) In subsection (2), after paragraph (aa) insert—
 - “(ab) by or under the Securitisation Regulations 2023;”.
 - (3) In subsection (3), after paragraph (f) insert—
 - “(g) a requirement imposed by regulation 38 of the Securitisation Regulations 2023 on a PRA-authorized person in a case where the temporary prohibition imposed under regulation 37(1) or (2) of those Regulations was imposed by the PRA.”.
 - (4) In subsection (6), after paragraph (aa) insert—
 - “(ab) by or under the Securitisation Regulations 2023;”.

(45) Subsection (4) was substituted by paragraph 5 of Schedule 8 to the Financial Services Act 2012 and amended by S.I. 2019/632.

(46) Section 66A was inserted by section 32(2) of the Financial Services (Banking Reform) Act 2013 (c. 33); subsection (4) was amended by S.I. 2015/1864, 2016/225 and 2019/632.

(47) Section 66B was inserted by section 32(2) of the Financial Services (Banking Reform) Act 2013; subsection (4) was amended by S.I. 2019/632.

(48) In section 168(4), paragraph (ic) was inserted by paragraph 8(1) of Schedule 2 to the Financial Services Act 2021.

(49) Section 204A was inserted by paragraph 10 of Schedule 9 to the Financial Services Act 2012. Subsection (6)(aa) was inserted by section 11(10) of the Civil Liability Act 2018 (c. 29).

PART 2

Application with modifications of provisions of FSMA 2000 and secondary legislation

Interpretation

7. In this Part of this Schedule “regulated person” has the meaning given in regulation 35.

Hearings and appeals

8.—(1) Part 9 of FSMA 2000 (hearings and appeals) applies in respect of references made to the Tribunal under these Regulations as it applies in respect of references made to the Tribunal under FSMA 2000 in respect of a decision of the FCA or the PRA, but with the modifications set out in sub-paragraphs (2) and (3).

(2) Section 133 of FSMA 2000(50) (proceedings before Tribunal: general provision) is to be read as if—

(a) in subsection (1), the words “(whether made under this or any other Act)” were omitted, and

(b) for subsection (7A) there were substituted—

“(7A) A reference is a “disciplinary reference” for the purposes of this section if it is in respect of a decision to—

- (a) impose a temporary prohibition under regulation 37 of the Securitisation Regulations 2023;
- (b) publish a statement under regulation 41 of those Regulations;
- (c) impose a penalty under regulation 42 of those Regulations.”.

(3) Section 133A of FSMA 2000(51) (proceedings before Tribunal: decision and supervisory notices, etc) is to be read as if in subsection (1) the words “as a result of section 388(2)” were omitted.

FCA rules and guidance

9.—(1) The provisions of Part 9A of FSMA 2000(52) listed in sub-paragraph (2) apply in relation to rules made by the FCA under regulation 22 or 34(1) of these Regulations as they apply in relation to rules made by the FCA under FSMA 2000, but subject to the modification in sub-paragraph (3).

(2) Those provisions are—

- (a) section 137T (general supplementary powers);
- (b) section 138A (modification or waiver of rules);
- (c) section 138C (evidential provisions);
- (d) section 138E (limits on effect of contravening rules);
- (e) sections 138F, 138G and 138H (notification, making and verification of rules);

(50) Section 133 was substituted by S.I. 2010/22 and relevant amendments were made by section 23(2) of the Financial Services Act 2012, section 4(2) of the Financial Services (Banking Reform) Act 2013, paragraph 3 of Part 2 of Schedule 2 to the Financial Services Act 2021, paragraph 6 of Part 2 of Schedule 10 and paragraph 160 of Part 10 of Schedule 11 to the Financial Services and Markets Act 2023 and S.I. 2016/680, 2017/1064 and 2013/1388.

(51) Substituted by S.I. 2010/22. Relevant amendments were made by section 23 of the Financial Services Act 2012.

(52) Part 9A was inserted by section 24 of the Financial Services Act 2012 and section 138BA was inserted by section 34 of the Financial Services and Markets Act 2023.

- (f) sections 138I and 138L (consultation);
 - (g) section 141A (power to make consequential amendments of references to rules).
- (3) The modification is that section 137T(53) (general supplementary powers) is to be read as if any reference to authorised persons were—
- (a) in the case of rules under regulation 22, a reference to securitisation repositories registered under Part 5;
 - (b) in the case of rules under regulation 34(1), a reference to small registered UK AIFMs.

Information gathering and investigations

10.—(1) Part 11 of FSMA 2000 (information gathering and investigations) applies in relation to the FCA’s and the PRA’s functions under these Regulations as it applies in relation to the FCA’s and the PRA’s functions under FSMA 2000, but with the modifications set out in sub-paragraphs (2) to (11).

(2) Part 11 is to be read as if any reference to an authorised person included a reference to a regulated person.

(3) Section 167 (appointment of persons to carry out general investigations) is to be read as if in subsection (5), for “regulated activities” there were substituted “the activities subject to regulation as a result of the Securitisation Regulations 2023”.

(4) Section 169(54) (investigations etc in support of overseas regulator) is to be read as if—

- (a) subsection (2A) were omitted, and
- (b) for subsection (13) there were substituted—

“(13) “Overseas regulator” means an authority in a country or territory outside the United Kingdom which has functions corresponding to those of the FCA or the PRA under the Securitisation Regulations 2023.”.

(5) Section 169A(55) (support of overseas regulator with respect to financial stability) does not apply.

(6) Section 170 (investigations: general) is to be read as if subsection (3)(b) were omitted.

(7) Section 171 (powers of persons appointed under section 167) is to be read as if subsections (3A) and (7) were omitted.

(8) Section 173 (powers of persons appointed as a result of section 168(2)) does not apply.

(9) Section 174(56) (admissibility of statements made to investigators) is to be read as if—

- (a) in subsection (2), the words from “or in proceedings” to “this subsection applies” were omitted,
- (b) subsection (3A) were omitted,
- (c) in subsection (4), the words from “or (5)” to the end were omitted, and
- (d) in subsection (5) “, 173” were omitted.

(10) Section 176(57) (entry of premises under warrant) is to be read as if—

- (a) in subsection (1), “the Secretary of State” were omitted,

(53) Section 137T was amended by section 66 of the Financial Services and Markets Act 2023.

(54) In section 169, subsection (2A) was inserted by [S.I. 2016/680](#).

(55) Section 169A was inserted by section 18 of the Financial Services Act 2010.

(56) Relevant amendments were made to section 174 by paragraph 12 of Schedule 12 to the Financial Services Act 2012 and [S.I. 2016/680](#).

(57) Relevant amendments were made to section 176 by paragraph 17 of Part 1 of Schedule 2 to the Financial Services Act 2010, paragraph 14 of Schedule 12 to the Financial Services Act 2012 and [S.I. 2005/1433](#).

- (b) subsection (3)(b) were omitted,
- (c) in subsection (10), “or (5)” were omitted, and
- (d) in subsection (11)—
 - (i) in paragraph (a), “87C, 87J,” and “165A, 169A” were omitted, and
 - (ii) in paragraph (b), “, 173” were omitted.

Injunctions and restitution

11.—(1) Part 25 of FSMA 2000 (injunctions and restitution) applies in respect of—

- (a) a relevant requirement as defined in regulation 35, or
- (b) a requirement imposed by the PRA under regulation 37, or
- (c) the requirement imposed by regulation 38 in a case where the temporary prohibition was imposed by the PRA,

as it applies in respect of a relevant requirement as defined for the purposes of a provision of that Part, but with the modifications set out in this paragraph.

- (2) Part 25 is to be read as if—
 - (a) each reference to the Act included a reference to these Regulations,
 - (b) each reference to a section of the Act were a reference to that Act as applied by these Regulations,
 - (c) references to the Secretary of State were omitted, and
 - (d) each reference to an authorised person included a reference to a regulated person.
- (3) Section 380 (injunctions) is to be read as if—
 - (a) references to the appropriate regulator were references to the PRA where the requirement falls within sub-paragraph (1)(b) or (c) and references to the FCA in any other case, and
 - (b) subsections (7) to (12) were omitted.
- (4) Section 381 (injunctions in case of market abuse) does not apply.
- (5) Section 382 (restitution orders) is to be read as if—
 - (a) references to the appropriate regulator were references to the PRA where the requirement falls within sub-paragraph (1)(b) or (c) and references to the FCA in any other case, and
 - (b) subsections (10) to (15) were omitted.
- (6) Section 383 (restitution orders in cases of market abuse) does not apply.
- (7) Section 384 (power of FCA or PRA to require restitution) is to be read as if—
 - (a) references to the appropriate regulator were references to the PRA where the requirement falls within sub-paragraph (1)(b) or (c) and references to the FCA in any other case,
 - (b) subsections (2) and (3) and references to those subsections were omitted, and
 - (c) subsections (7) to (13) were omitted.

Notices

12.—(1) Part 26 of FSMA 2000 (notices), other than sections 391A, 391B, 391C, 391D, 391E and 391F, applies with respect to the giving of notices by the FCA or the PRA under regulations 11, 30, 40, 43 and 44 of these Regulations and under FSMA 2000 as applied by these

Regulations as it applies with respect to the giving of notices by the FCA or the PRA under FSMA 2000, but with the following modifications.

- (2) Section 387 (warning notices) is to be read as if subsections (1A) and (3A) were omitted.
- (3) Section 388 (decision notices) is to be read as if subsections (1A) and (2) were omitted.
- (4) Section 391(58) (publication) is to be read as if—
 - (a) references to a supervisory notice were references to a notice under regulation 11(2) or (5), 30(3) or (6)(a), (d) or (e) or 40(3) or (6)(a), (d) or (e);
 - (b) in subsection (1), the reference to a warning notice falling within subsection (1ZB) were a reference to a warning notice given under regulation 43;
 - (c) subsections (1ZA), (1ZB), (4A), (5A), (6A), (7A), (7B), (8A), (8B), (8C), (8D) and (8E) were omitted.
- (5) Section 392 (application of sections 393 and 394) is to be read as if—
 - (a) for paragraphs (a) and (b) there were substituted—
 - “(a) a warning notice given in accordance with regulation 43 of the Securitisation Regulations 2023 or section 385 as applied by those Regulations;
 - (b) a decision notice given in accordance with regulation 44 of those Regulations, or section 386 as applied by those Regulations.”.
- (6) Section 395 (the FCA’s and PRA’s procedures) is to be read as if references to a supervisory notice were references to a notice under regulation 11(2) or (5), 30(3) or (6)(a), (d) or (e) or under regulation 40(3) or (6)(a), (d) or (e).

Offences

13.—(1) Section 398 of FSMA 2000 applies in relation to requirements imposed by or under these Regulations as it applies in relation to requirements imposed by or under FSMA 2000.

(2) Section 400 of FSMA 2000 (offences by bodies corporate etc) applies in respect of offences under FSMA 2000 as applied by these Regulations as it applies in respect of offences under FSMA 2000.

(3) Section 401 of FSMA 2000 (proceedings for offences) applies in respect of offences under FSMA 2000 as applied by these Regulations as it applies in respect of offences under FSMA 2000 but as if—

- (a) subsection (1)(c) were omitted;
- (b) references to the Secretary of State were omitted;
- (c) subsections (3A), (3AB) and (3B) were omitted.

(4) Section 403 of FSMA 2000 (jurisdiction and procedure in respect of offences) applies in respect of offences under FSMA 2000 as applied by these Regulations as it applies in respect of offences under FSMA 2000.

Limitation on power to require documents

14. Section 413 of FSMA 2000 (protected items) applies for the purposes of these Regulations as it applies for the purposes of FSMA 2000.

(58) Section 391(1) was substituted by paragraph 30 of Part 6 of Schedule 9 to the Financial Services Act 2012.

Consultation in relation to taking of certain enforcement action

15. Section 415B of FSMA 2000(**59**) (consultation in relation to taking certain enforcement action) applies in respect of—

- (a) notices given by the FCA or the PRA under regulation 43 or 44 of these Regulations, and
- (b) applications to the court by the FCA or the PRA under a provision of FSMA 2000 as applied by these Regulations.

Penalties

16.—(1) Paragraphs 19 to 21 (penalties) of Schedule 1ZA to FSMA 2000(**60**) apply with respect to penalties imposed by the FCA under these Regulations and under FSMA 2000 as applied by these Regulations as they apply with respect to penalties imposed by the FCA under FSMA 2000, but with the following modifications.

(2) For the purposes of paragraph 20, the FCA’s enforcement powers are to be taken to include—

- (a) its powers under the provisions mentioned in section 133(7A) as applied by this Schedule and under Part 25 of FSMA 2000 as applied by this Schedule;
- (b) its powers in relation to the investigation of offences under any provision of FSMA 2000 as applied by this Schedule;
- (c) its powers in England and Wales or Northern Ireland in relation to the prosecution of such offences.

(3) For the purposes of paragraph 21, “regulated persons” include regulated persons within the meaning of this Part of this Schedule.

17.—(1) Paragraphs 27 to 30 (penalties) of Schedule 1ZB to FSMA 2000(**61**) apply with respect to penalties imposed by the PRA under these Regulations and under FSMA 2000 as applied by these Regulations as they apply with respect to penalties imposed by the FCA under FSMA 2000, but with the following modifications.

(2) For the purposes of paragraph 28, the PRA’s enforcement powers are to be taken to include—

- (a) its powers under the provisions mentioned in section 133(7A) as applied by this Schedule;
- (b) its powers in relation to the investigation of offences under any provision of FSMA 2000 as applied by this Schedule;
- (c) its powers in England and Wales or Northern Ireland in relation to the prosecution of such offences.

(3) For the purposes of paragraph 29, “PRA-authorised persons” include regulated persons within the meaning of this Part of this Schedule.

Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001

18. The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001(**62**) (“the Notice Regulations”) apply in respect of a notice or document given by the FCA or the PRA under these Regulations or under FSMA 2000 as applied by these Regulations as they apply in respect of a notice or document given by the FCA or the PRA under FSMA 2000, as if—

- (a) that notice or document were a “relevant document” under the Notice Regulations;

(59) Section 415B was inserted by paragraph 41 of Part 8 of Schedule 9 to the Financial Services Act 2012.

(60) Schedule 1ZA was inserted by Schedule 3 to the Financial Services Act 2012.

(61) Schedule 1ZB was inserted by Schedule 3 to the Financial Services Act 2012.

(62) [S.I. 2001/1420](#).

- (b) each reference to “the Act” included a reference to these Regulations and to FSMA 2000 as applied by these Regulations;
- (c) each reference to a section of FSMA 2000 were a reference to that section as applied by these Regulations;
- (d) each reference to an investigating authority were a reference to the FCA or the PRA.

SCHEDULE 2

Regulation 51

Amendments to other legislation and consequential amendments

Amendment to EMIR

1. In Article 4 of EMIR(63) (clearing obligation) in paragraph 5A(a)—
 - (a) the words from “a securitisation notified as STS” to the end become paragraph (i);
 - (b) at the end of that paragraph insert—
 - “; or
 - (ii) an overseas STS securitisation as defined in regulation 12(2) of the Securitisation Regulations 2023.”.

Amendment to the Capital Requirements Regulation

2. For Article 242(10)(b) (meaning of “simple, transparent and standardised securitisation” or “STS securitisation”) of the Capital Requirements Regulation(64) substitute—
 - “(b) an overseas STS securitisation as defined in regulation 12(2) of the Securitisation Regulations 2023;”.

Amendment to the Solvency 2 Delegated Regulation

3. For Article 1(18b)(b) (meaning of “STS securitisation”) of Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)(65) substitute—
 - “(b) an overseas STS securitisation as defined in regulation 12(2) of the Securitisation Regulations 2023;”.

Amendment to the Money Market Funds Regulation

4. For Article 11(1)(d) of Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds (eligible securitisations and ABCPs)(66) substitute—
 - “(d) an overseas STS securitisation as defined in regulation 12(2) of the Securitisation Regulations 2023.”.

(63) EUR 2012/648. Article 4(5A) was inserted by S.I. 2019/660 and amended by S.I. 2020/1301 and 2022/1223.

(64) EUR 2013/575. Article 242(10) is prospectively amended by paragraph 38 of Part 3 of Schedule 2 to the Financial Services and Markets Act 2023.

(65) EUR 2015/35. Article 1(18b)(b) was inserted by paragraph 39 of Part 3 of Schedule 2 to the Financial Services and Markets Act 2023.

(66) EUR 2017/1131. Article 11(1)(d) was inserted by paragraph 40 of Part 3 of Schedule 2 to the Financial Services and Markets Act 2023.

SCHEDULE 3

Regulation 53

Transitional provisions

Interpretation

1.—(1) — In this Schedule “the EU-derived securitisation legislation” means—

- (a) the EU Securitisation Regulation 2017 and any provision made under it,
- (b) any technical standards to which Chapter 2A of Part 9A of FSMA 2000⁽⁶⁷⁾ applies which were originally made under the EU Securitisation Regulation 2017, and
- (c) the Securitisation Regulations 2018⁽⁶⁸⁾.

(2) Any reference in this Schedule to the revocation of the EU-derived securitisation legislation is a reference to its revocation by section 1(1) of, and Schedule 1 to, the Financial Services and Markets Act 2023.

STS securitisations on list maintained by FCA under EU Securitisation Regulation 2017

2.—(1) On the main commencement day, the FCA must include on the list referred to in regulation 10(2) any securitisations that immediately before that day were included on the list maintained by the FCA under Article 27(5) of the EU Securitisation Regulation 2017⁽⁶⁹⁾.

(2) Sub-paragraph (1) is subject to regulation 10(3) (which requires the FCA in certain circumstances to remove a securitisation from the list).

(3) A securitisation within sub-paragraph (1) is to be regarded for the purposes of these Regulations as meeting the STS criteria at any time on or after the main commencement day if, and only if, the securitisation complies with Articles 19 to 22 or Articles 23 to 26 of the EU Securitisation Regulation 2017⁽⁷⁰⁾, as they had effect immediately before the main commencement day.

(4) References in these Regulations to compliance with the STS criteria are, in relation to a securitisation within sub-paragraph (1), to be read in accordance with sub-paragraph (3).

Temporary bans on STS notifications

3.—(1) Where immediately before the main commencement day a temporary ban has effect under regulation 21 of the Securitisation Regulations 2018, the temporary ban is to be treated for the remainder of the period for which it is to have effect as having been imposed under regulation 39 of these Regulations, but this is subject to the powers of the FCA under regulation 39(2).

(2) In regulation 39(1)(a) a reference to failure to meet the requirements of designated activity rules made by virtue of regulation 5, so far as those rules relate to STS securitisations, is to be read as including a reference to—

- (a) a failure before the main commencement day to meet the requirements of Article 19, 20, 21, 23, 24, 25 or 26 of the EU Securitisation Regulation 2017, in a case where no decision notice has been given before the main commencement day, or
- (b) the making of a misleading notification pursuant to Article 27(1) of the EU Securitisation Regulation 2017⁽⁷¹⁾, in a case where no decision notice has been given before that day.

⁽⁶⁷⁾ Part 9A was inserted by section 24(1) of the Financial Services Act 2012; Chapter 2A was inserted by S.I. 2018/1115.

⁽⁶⁸⁾ S.I. 2018/1288.

⁽⁶⁹⁾ Article 27 was substituted by S.I. 2019/660.

⁽⁷⁰⁾ Articles 19 to 26 were amended by S.I. 2019/660.

⁽⁷¹⁾ Article 27(1) was substituted by S.I. 2019/660.

Securitisation repositories

4.—(1) This paragraph applies where, immediately before the main commencement day, a securitisation repository is registered with the FCA for the purposes of Article 5 of the EU Securitisation Regulation 2017 under Article 10 of that Regulation⁽⁷²⁾.

(2) On and after the main commencement day, the securitisation repository is to be taken to have been registered under regulation 14 of these Regulations, but this is subject to the provisions of these Regulations relating to the withdrawal of registration.

5. Where immediately before the main commencement day a securitisation repository is subject to a requirement imposed under regulation 64A of the Over the Counter Derivatives, Central Counterparties and Trade Depositories (Amendment, etc, and Transitional Provision) Regulations 2019⁽⁷³⁾ as applied by Article 15 of the EU Securitisation Regulation 2017⁽⁷⁴⁾, the requirement is to be taken on or after that day to have been imposed under regulation 23 of these Regulations.

Third party verification services

6.—(1) This paragraph applies where, immediately before the main commencement day, a person is authorised by the FCA for the purposes of Article 28 of the EU Securitisation Regulation 2017⁽⁷⁵⁾ to provide a third party verification service.

(2) On and after the main commencement day, the person is to be taken to have been registered under regulation 25 of these Regulations, but this is subject to the provisions of these Regulations relating to the withdrawal of registration.

References to Tribunal

7.—(1) This paragraph applies where immediately before the main commencement day—

(a) a person has a right to make a reference to the Tribunal in respect of any decision of the FCA to refuse—

(i) registration as a securitisation repository under Article 10 of the EU Securitisation Regulation 2017⁽⁷⁶⁾, or

(ii) authorisation for the purposes of Article 28 of the EU Securitisation Regulation 2017⁽⁷⁷⁾ to provide a third party verification service, or

(b) such a reference has been made but not determined.

(2) These Regulations and the revocation of the EU-derived securitisation legislation do not affect the reference to the Tribunal.

(3) If the Tribunal refers the matter to the FCA for decision, paragraph 4 or 6 applies in relation to registration or authorisation in accordance with a direction of the Tribunal as it applies in relation to registration or authorisation having effect immediately before the main commencement day.

⁽⁷²⁾ Articles 5 and 10 were amended by S.I. 2019/660.

⁽⁷³⁾ S.I. 2019/335; regulation 64A was inserted by S.I. 2020/1385.

⁽⁷⁴⁾ Article 15 was amended by S.I. 2019/660.

⁽⁷⁵⁾ Article 28 was amended by S.I. 2019/660.

⁽⁷⁶⁾ Article 10 was amended by S.I. 2019/660.

⁽⁷⁷⁾ Article 28 was amended by S.I. 2019/660.

Temporary prohibitions relating to management functions

8.—(1) Where, immediately before the main commencement day, a temporary prohibition has effect under regulation 5 of the Securitisation Regulations 2018, the temporary prohibition is to be treated for the remainder of the period for which it is to have effect as having been imposed under regulation 37 of these Regulations by the regulator which imposed it, but this is subject to the powers of the regulator under regulation 37(4).

(2) In regulation 37(1), the reference to a contravention of a relevant requirement is to be read as including a contravention before the main commencement day of a relevant requirement as defined in regulation 2(1) of the Securitisation Regulations 2018 as respects which the FCA was the appropriate regulator.

(3) In regulation 37(2), the reference to a contravention of PRA securitisation rules is to be read as including a contravention before the main commencement day of a relevant requirement as defined in regulation 2(1) of the Securitisation Regulations 2018 as respects which the PRA was the appropriate regulator.

(4) Sub-paragraphs (2) and (3) do not apply where, before the main commencement day, a decision notice has been given relating to the imposition of a temporary prohibition under regulation 5 of the Securitisation Regulations 2018 by reference to the contravention in question.

Disciplinary measures in respect of contraventions before main commencement day

9.—(1) The revocation of the EU-derived securitisation legislation does not affect the exercise by the FCA or the PRA, in respect of things done or omitted before the main commencement day, of their powers—

- (a) under regulation 7 of the Securitisation Regulations 2018 (public censure) or regulation 8 of those Regulations (financial penalties),
- (b) under any provision of the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc, and Transitional Provisions) (EU Exit) Regulations 2019(78) as applied by the Securitisation Regulations 2018, or
- (c) under any provision of FSMA 2000 as applied by the Securitisation Regulations 2018.

(2) Sub-paragraph (1) does not limit the application of section 16 of the Interpretation Act 1978(79).

Directions given under regulation 25 of Securitisation Regulations 2018

10.—(1) Any direction given by the FCA or the PRA under regulation 25 of the Securitisation Regulations 2018 (transparency requirements for originators, sponsors and SSPEs of private securitisations) that is in force immediately before the main commencement day is to remain in force on and after that day until revoked under this paragraph.

(2) On and after the main commencement day, the direction to which sub-paragraph (1) applies to be read as if—

- (a) the reference to the information under Article 7(1)(a) to (g) of the EU Securitisation Regulation 2017(80) were a reference to the information referred to in any provisions of the appropriate rules that require the originator, sponsor or SSPE to provide information in relation to a securitisation,

(78) S.I. 2019/335.

(79) 1978 c. 30.

(80) Article 7(1) was amended by S.I. 2019/660.

- (b) other expressions defined by reference to the EU Securitisation Regulation 2017 had the same meaning as in these Regulations, and
- (c) the reference to an entity designated under subparagraph 1 of Article 7(2) of the EU Securitisation Regulations 2017⁽⁸¹⁾ were a reference to an entity designated under an equivalent provision of the appropriate rules.
- (3) The provisions of Part 8 of these Regulations, of FSMA 2000, and of FSMA 2000 as applied by Schedule 1 to these Regulations, apply in relation to a failure on or after the main commencement day to comply with a direction to which sub-paragraph (1) applies as those provisions apply in relation to a contravention of the appropriate rules.
- (4) In this paragraph “the appropriate rules” means—
- (a) in the case of a PRA-authorized person, rules made by the PRA under section 137G of FSMA 2000 relating to securitisations;
 - (b) in any other case, designated activity rules made by virtue of regulation 5.
- (5) The FCA or the PRA may by a further direction amend a direction to which sub-paragraph (1) applies that was given by it.
- (6) The FCA or the PRA may by notice revoke a direction to which sub-paragraph (1) applies that was given by it.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations specify certain securitisation activities as “designated activities” for the purposes of the Financial Services and Markets Act 2000 (see Part 5A) (c. 8) and confer powers on the Financial Conduct Authority (“FCA”) to make rules and give directions in relation to these activities. The activities are acting as an originator, sponsor, original lender or securitisation special purpose entity in a securitisation and selling a securitisation position to a retail client in the United Kingdom.

The Regulations specify the coherence of the overall framework for the regulation of securitisation as a matter to which the FCA and the Prudential Regulation Authority (“PRA”) must have regard when making rules relating to securitisation.

The Regulations also restate some provisions of [Regulation \(EU\) 2017/2402](#) of 12th December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation (“the Securitisation Regulation”), in some cases with modifications. The restated provisions are revoked by section 1(1) of, and Schedule 1 to, the Financial Services and Markets Act 2023 (c. 29) alongside the remainder of the Securitisation Regulation, related EU tertiary legislation and the Securitisation Regulations 2018 ([S.I. 2018/1288](#)). Most other provisions revoked are restated (where appropriate with modifications) in rules made by the FCA and the PRA.

Revoked provisions of the Securitisation Regulation restated in these Regulations, in some cases with modifications, include—

- Articles 10 to 15 (registration of securities repositories);

⁽⁸¹⁾ Article 7(2) was amended by [S.I. 2019/660](#).

- Article 18 (use of the designation “simple, transparent and standardised securitisation” or “STS”);
- Article 27 (STS notification requirements) including the duty of the FCA to publish and maintain a list of STS securitisations;
- Article 28 (registration of third parties verifying STS compliance);
- Article 28A, which was inserted by the Financial Services and Markets Act 2023 (Treasury power to designate a country or territory in relation to securitisations).

The Regulations require the FCA and PRA to make rules setting out due-diligence requirements for certain institutional investors who are authorised persons and who are not trustees or managers of an occupational pension scheme. They also enable the FCA to make rules in relation to the holding of securitisation positions by small registered UK AIFMs.

The Regulations also restate, with some modifications, the existing duty of the FCA to monitor compliance and powers for the FCA and PRA to take enforcement action, including imposing disciplinary measures.

The Regulations contain savings relating to certain pre-2019 securitisations to which the Securitisation Regulation did not apply. The Regulations also contain provisions dealing with the transition from the existing law to the new provisions.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. A de minimis impact assessment is available from HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ and is published with the Explanatory Memorandum alongside this instrument at www.legislation.gov.uk.