

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 (Text with EEA relevance)

PART FIVE

EXPOSURES TO TRANSFERRED CREDIT RISK

TITLE I

GENERAL PROVISIONS FOR THIS PART

Article 404

Scope of application

Titles II and III shall apply to new securitisations issued on or after 1 January 2011. Titles II and III shall, after 31 December 2014, apply to existing securitisations where new underlying exposures are added or substituted after that date.

TITLE II

REQUIREMENTS FOR INVESTOR INSTITUTIONS

Article 405

Retained interest of the issuer

1 An institution, other than when acting as an originator, a sponsor or original lender, shall be exposed to the credit risk of a securitisation position in its trading book or non-trading book only if the originator, sponsor or original lender has explicitly disclosed to the institution that it will retain, on an ongoing basis, a material net economic interest which, in any event, shall not be less than 5 %.

Only any of the following qualifies as retention of a material net economic interest of not less than 5 %:

- a retention of no less than 5 % of the nominal value of each of the tranches sold or transferred to the investors;
- b in the case of securitisations of revolving exposures, retention of the originator's interest of no less than 5 % of the nominal value of the securitised exposures;
- c retention of randomly selected exposures, equivalent to no less than 5 % of the nominal value of the securitised exposures, where such exposures would otherwise have been securitised in the securitisation, provided that the number of potentially securitised exposures is no less than 100 at origination;
- d retention of the first loss tranche and, if necessary, other tranches having the same or a more severe risk profile than those transferred or sold to investors and not maturing any

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- earlier than those transferred or sold to investors, so that the retention equals in total no less than 5 % of the nominal value of the securitised exposures;
- e retention of a first loss exposure not less than 5 % of every securitised exposure in the securitisation.

Net economic interest is measured at the origination and shall be maintained on an ongoing basis. The net economic interest, including retained positions, interest or exposures, shall not be subject to any credit risk mitigation or any short positions or any other hedge and shall not be sold. The net economic interest shall be determined by the notional value for off-balance sheet items.

There shall be no multiple applications of the retention requirements for any given securitisation.

2 Where an EU parent credit institution, an EU financial holding company, an EU mixed financial holding company or one of its subsidiaries, as an originator or a sponsor, securitises exposures from several credit institutions, investment firms or other financial institutions which are included in the scope of supervision on a consolidated basis, the requirement referred to in paragraph 1 may be satisfied on the basis of the consolidated situation of the related EU parent credit institution, EU financial holding company, or EU mixed financial holding company.

The first subparagraph shall apply only where credit institutions, investment firms or financial institutions which created the securitised exposures have committed themselves to adhere to the requirements set out in Article 408 and deliver, in a timely manner, to the originator or sponsor and to the EU parent credit institution, EU financial holding company or EU mixed financial holding company the information needed to satisfy the requirements referred to in Article 409.

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

- a central governments or central banks;
- b regional governments, local authorities and public sector entities of Member States;
- c institutions to which a 50 % risk weight or less is assigned under Part Three, Title II, Chapter 2;
- d multilateral development banks.

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

Article 406

Due diligence

1 Before becoming exposed to the risks of a securitisation, and as appropriate thereafter, institutions shall be able to demonstrate to the competent authorities for each of their individual securitisation positions, that they have a comprehensive and thorough understanding of and have implemented formal policies and procedures appropriate to their trading book and non-trading book and commensurate with the risk profile of their investments in securitised positions for analysing and recording:

- a information disclosed under Article 405(1), by originators, sponsors or original lenders to specify the net economic interest that they maintain, on an ongoing basis, in the securitisation;

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- b the risk characteristics of the individual securitisation position;
- c the risk characteristics of the exposures underlying the securitisation position;
- d the reputation and loss experience in earlier securitisations of the originators or sponsors in the relevant exposure classes underlying the securitisation position;
- e the statements and disclosures made by the originators or sponsors, or their agents or advisors, about their due diligence on the securitised exposures and, where applicable, on the quality of the collateral supporting the securitised exposures;
- f where applicable, the methodologies and concepts on which the valuation of collateral supporting the securitised exposures is based and the policies adopted by the originator or sponsor to ensure the independence of the valuer;
- g all the structural features of the securitisation that can materially impact the performance of the institution's securitisation position, such as the contractual waterfall and waterfall related triggers, credit enhancements, liquidity enhancements, market value triggers, and deal-specific definitions of default.

Institutions shall regularly perform their own stress tests appropriate to their securitisation positions. To this end, institutions may rely on financial models developed by an ECAI provided that institutions can demonstrate, when requested, that they took due care prior to investing to validate the relevant assumptions in and structuring of the models and to understand methodology, assumptions and results.

2 Institutions, other than when acting as originators or sponsors or original lenders, shall establish formal procedures appropriate to their trading book and non-trading book and commensurate with the risk profile of their investments in securitised positions to monitor on an ongoing basis and in a timely manner performance information on the exposures underlying their securitisation positions. Where relevant, this shall include the exposure type, the percentage of loans more than 30, 60 and 90 days past due, default rates, prepayment rates, loans in foreclosure, collateral type and occupancy, and frequency distribution of credit scores or other measures of credit worthiness across underlying exposures, industry and geographical diversification, frequency distribution of loan to value ratios with band widths that facilitate adequate sensitivity analysis. Where the underlying exposures are themselves securitisation positions, institutions shall have the information set out in this subparagraph not only on the underlying securitisation tranches, such as the issuer name and credit quality, but also on the characteristics and performance of the pools underlying those securitisation tranches.

Institutions shall also apply the same standards of analysis to participations or underwritings in securitisation issues purchased from third parties whether such participations or underwritings are to be held on their trading or non-trading book.

Article 407

Additional risk weight

Where an institution does not meet the requirements in Article 405, 406 or 409 in any material respect by reason of the negligence or omission of the institution, the competent authorities shall impose a proportionate additional risk weight of no less than 250 % of the risk weight (capped at 1 250 %) which shall apply to the relevant securitisation positions in the manner specified in Article 245(6) or Article 337(3) respectively. The additional risk weight shall progressively increase with each subsequent infringement of the due diligence provisions.

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The competent authorities shall take into account the exemptions for certain securitisations provided in Article 405(3) by reducing the risk weight it would otherwise impose under this Article in respect of a securitisation to which Article 405(3) applies.

TITLE III

REQUIREMENTS FOR SPONSOR AND ORIGINATOR INSTITUTIONS

Article 408

Criteria for credit granting

Sponsor and originator institutions shall apply the same sound and well-defined criteria for credit-granting in accordance with the requirements of Article 79 of Directive 2013/36/EU to exposures to be securitised as they apply to exposures to be held in their own non-trading book. To this end the same processes for approving and, where relevant, amending, renewing and re-financing credits shall be applied by the originator and sponsor institutions.

Where the requirements referred to in the first subparagraph of this Article are not met, Article 245(1) shall not be applied by an originator institution and that originator institution shall not be allowed to exclude the securitised exposures from the calculation of its capital requirements under this Regulation.

Article 409

Disclosure to investors

Institutions acting as an originator, a sponsor or original lender shall disclose to investors the level of their commitment under Article 405 to maintain a net economic interest in the securitisation. Sponsor and originator institutions shall ensure that prospective investors have readily available access to all materially relevant data on the credit quality and performance of the individual underlying exposures, cash flows and collateral supporting a securitisation exposure as well as such information that is necessary to conduct comprehensive and well informed stress tests on the cash flows and collateral values supporting the underlying exposures. For that purpose, materially relevant data shall be determined as at the date of the securitisation and where appropriate due to the nature of the securitisation thereafter.

Article 410

Uniform condition of application

- 1 EBA shall report to the Commission annually on measures taken by the competent authorities in order to ensure the compliance with the requirements of Titles II and III by institutions.
- 2 EBA shall develop draft regulatory technical standards to specify in greater detail:
 - a the requirements in Articles 405 and 406 applying to institutions becoming exposed to the risk of a securitisation;

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- b the retention requirement, including the qualifying criteria for retaining a material net economic interest as referred to in Article 405 and the level of retention;
- c the due diligence requirements in Article 406 for institutions becoming exposed to a securitisation position; and
- d the requirements in Articles 408 and 409 applying to sponsor and originator institutions.

EBA shall submit those draft regulatory technical standards to the Commission by 1 January 2014.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

3 EBA shall develop draft implementing technical standards to facilitate the convergence of supervisory practices with regard to the implementation of Article 407, including the measures to be taken in the case of breach of the due diligence and risk management obligations.

EBA shall submit those draft implementing technical standards to the Commission by 1 January 2014.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

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