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DRAFT STATUTORY INSTRUMENTS

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**2023 No.**

**The Securitisation Regulations 2023**

**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(1) 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(2), and 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;

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

(2) [EUR 2009/1060](#). Article 3(1) was substituted by [S.I. 2019/266](#).

- (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.