
STATUTORY INSTRUMENTS

2024 No. 705

The Securitisation (Amendment) Regulations 2024

Amendments to the Securitisation Regulations 2024

2.—(1) The Securitisation Regulations 2024(1) are amended as follows.

(2) In regulation 2 (commencement), in paragraph (2), for the words from “the day” to “into force” substitute “1st November 2024”.

(3) In regulation 3 (interpretation), in paragraph (1), after the definition of “originator” insert—
““overseas STS securitisation” has the meaning given in regulation 12(2);”.

(4) In regulation 6 (power of FCA to give directions), in paragraph (3)(a)—

(a) at the end of paragraph (i), omit “or”;

(b) after paragraph (i) insert—

“(ia) by regulation 8A (restriction on establishment of an SSPE), or”.

(5) After regulation 8 insert—

“Part 3A

Restriction on establishment of a securitisation special purpose entity

Restriction on establishment of a securitisation special purpose entity

8A.—(1) The originator and sponsor in relation to a securitisation must ensure that the securitisation is not carried out by means of a securitisation special purpose entity that is established in a country or territory outside the United Kingdom that is for the time being listed by the Financial Action Task Force(2) as a high-risk jurisdiction subject to—

(a) a call on members to apply proportionate enhanced due diligence measures, or

(b) a call on members and other jurisdictions to apply countermeasures.

(2) An institutional investor must not invest in a securitisation carried out by means of a securitisation special purpose entity that is established in a country or territory outside the United Kingdom to which paragraph (1) applies.”.

(6) In regulation 13 (overseas simple, transparent and standardised securitisations regime), after paragraph (7) insert—

“(7A) Regulations under paragraph (1) may—

(a) specify matters that a person carrying out a due-diligence assessment required by regulations 32B and 32C must consider with regard to an overseas STS securitisation;

(1) S.I. 2024/102.

(2) See <https://fatf-gafi.org/en/publications/High-risk-and-other-monitored-jurisdictions>.

- (b) in relation to a matter specified, specify the extent to which the person may rely on the matter.”.

(7) In Part 7 (due-diligence requirements), before regulation 33 insert—

“Interpretation of Part 7

32A. In this Part—

“applicable FCA or PRA rules”, in relation to an originator, sponsor, original lender or securitisation special purpose entity, means such of the following as are applicable to the originator, sponsor, original lender or securitisation special purpose entity—

- (a) designated activity rules made by virtue of regulation 5;
- (b) rules made by the PRA under section 137G of FSMA 2000⁽³⁾;

“fully-supported ABCP programme” means an ABCP programme that is a fully-supported ABCP programme as defined in designated activity rules made by virtue of regulation 5;

“fully-supported ABCP transaction” means an ABCP transaction that is a fully-supported ABCP transaction as defined in designated activity rules made by virtue of regulation 5;

“liquidity facility” means the securitisation position arising from a contractual agreement to provide funding to ensure timeliness of cash flows to investors.

Due-diligence requirements for occupational pension schemes: before holding a securitisation position

32B.—(1) Before holding a securitisation position, the trustees or managers of an occupational pension scheme who are not the originator, sponsor or original lender must verify the following matters—

- (a) where the originator or original lender is established in the United Kingdom and is not a CRR firm or an FCA investment firm, that the originator or original lender—
 - (i) grants all the credits giving rise to the underlying exposures, unless they are trade receivables not originated in the form of a loan, on the basis of sound and well-defined criteria and clearly established processes for approving, amending, renewing and financing those credits in accordance with any applicable FCA or PRA rules relating to credit-granting requirements, and
 - (ii) has effective systems in place to apply those criteria and processes in accordance with any applicable FCA or PRA rules relating to credit-granting requirements;
- (b) where the originator or original lender is not established in the United Kingdom, that the originator or original lender—
 - (i) grants all the credits giving rise to the underlying exposures, unless they are trade receivables not originated in the form of a loan, on the basis of sound and well-defined criteria and clearly established processes for approving, amending, renewing and financing those credits, and
 - (ii) has effective systems in place to apply those criteria and processes to ensure that credit-granting is based on a thorough assessment of the obligor’s creditworthiness;
- (c) where the originator, sponsor or original lender is established in the United Kingdom, that—

(3) Section 137G was inserted by section 24(1) of the Financial Services Act 2012 (c. 21).

- (i) the originator, sponsor or original lender continually retains a material net economic interest in accordance with any applicable FCA or PRA rules relating to risk retention requirements, and
 - (ii) that risk retention is disclosed to the trustees or managers of the occupational pension scheme in accordance with any applicable FCA or PRA rules relating to transparency requirements;
- (d) where the originator, sponsor or original lender is not established in the United Kingdom—
- (i) that the originator, sponsor or original lender continually retains a material net economic interest which, in any event, must not be less than 5%, determined in accordance with rules made by the FCA or PRA relating to risk retention requirements which would be applicable FCA or PRA rules were the originator, sponsor or original lender to be established in the United Kingdom, and
 - (ii) that the originator, sponsor or original lender discloses the risk retention to the trustees or managers of the occupational pension scheme;
- (e) that the originator, sponsor or securitisation special purpose entity—
- (i) has made available sufficient information to enable the trustees or managers of the occupational pension scheme independently to assess the risks of holding the securitisation position, and
 - (ii) has committed to make available further information on an ongoing basis as appropriate.
- (2) In paragraph (1)(a)—
- “CRR firm” has the meaning given in Article 4(1)(2A) of the Capital Requirements Regulation(4);
- “FCA investment firm” has the meaning given in Article 4(1)(2AB) of the Capital Requirements Regulation(5).
- (3) In the case of a fully-supported ABCP transaction, the trustees or managers of an occupational pension scheme are not required to verify the matters referred to in paragraph (1) (a).
- (4) The information referred to in paragraph (1)(e) must include at least the information specified in the first column of Schedule A1, which must be provided at least with the frequency, or on the occasions, specified in the corresponding entry in the second column of that Schedule.
- (5) Before holding a securitisation position, the trustees or managers of an occupational pension scheme who are not the originator, sponsor or original lender must carry out a due-diligence assessment which enables them to assess the risks involved and consider at least all of the following—
- (a) the risk characteristics of the individual securitisation position and of the underlying exposures;
 - (b) any of the structural features of the securitisation that could materially impact the performance of the securitisation position, including the contractual priorities of payment and priority of payment-related triggers, credit enhancements, liquidity enhancements, market value triggers, and transaction-specific definitions of default;

(4) For the meaning of “the Capital Requirements Regulation” see regulation 3(1) of S.I. 2024/102. Article 4(1)(2A) was inserted by S.I. 2018/1401 and amended by section 1(3) of the Financial Services Act 2021 (c. 22).

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

- (c) with regard to a securitisation included on the list maintained under regulation 10(2), compliance with the STS criteria and with any applicable designated activity rules relating to the notification mentioned in regulation 10(1);
 - (d) with regard to a securitisation that appears to the trustees or managers to be an overseas STS securitisation—
 - (i) whether the securitisation falls within a description of securitisation specified in regulations under regulation 13(1) in relation to a country or territory designated under those regulations, and
 - (ii) any matters specified for the purposes of regulation 13(7A)(a) in regulations under regulation 13(1);
 - (e) with regard to a securitisation falling within paragraph (3)(b) and (c) of regulation 12, compliance with the requirements referred to in paragraph (3)(a) of that regulation and with Article 27 of the EU Securitisation Regulation 2017 as it had effect in relation to the European Union at the time of the notification mentioned in paragraph (3)(b) of that regulation.
- (6) In addition to the matters specified in paragraph (5)(a) and (b), in the case of a fully-supported ABCP programme, the trustees or managers of an occupational pension scheme investing in the commercial paper issued by that ABCP programme must consider the features of the ABCP programme and the full liquidity support.
- (7) The duty in paragraph (5)(c) applies whether or not a third party verifier has assessed compliance of the securitisation with the STS criteria.
- (8) In considering the matter referred to in paragraph (5)(c), the trustees or managers of an occupational pension scheme may rely to an appropriate extent on the STS notification and on the information disclosed by the originator, sponsor and securitisation special purpose entity concerning compliance with the STS criteria, without solely or mechanistically relying on that notification or information.
- (9) In relation to an overseas STS securitisation, the trustees or managers of an occupational pension scheme may rely on a matter specified under regulation 13(7A)(b) to such extent as regulations under regulation 13(1) provide.
- (10) In considering the matter referred to in paragraph (5)(e), the trustees or managers of an occupational pension scheme may rely to an appropriate extent on the notification referred to in regulation 12(3)(b) and on the information disclosed by the originator, sponsor and securitisation special purpose entity to the European Securities and Markets Authority concerning compliance with the requirements referred to in regulation 12(3)(a), without solely or mechanistically relying on that notification or information.

Due-diligence requirements for occupational pension schemes: ongoing requirements

32C.—(1) Where the trustees or managers of an occupational pension scheme hold a securitisation position in relation to which they are not the originator, sponsor or original lender, the trustees or managers must at least establish appropriate written procedures that are proportionate to the risk profile of the securitisation position and, where relevant, to their trading and non-trading book, in order to monitor on an ongoing basis—

- (a) compliance with regulation 32B in relation to matters arising while the securitisation position is held, and
 - (b) the performance of the securitisation position and of the underlying exposures.
- (2) The written procedures referred to in paragraph (1) must, where relevant to the securitisation and the underlying exposures, include—
- (a) monitoring of the exposure type,

- (b) the percentage of loans more than 30, 60 and 90 days past due,
 - (c) default rates,
 - (d) prepayment rates,
 - (e) loans in foreclosure,
 - (f) recovery rates,
 - (g) repurchases,
 - (h) loan modifications,
 - (i) payment holidays,
 - (j) collateral type and occupancy, and
 - (k) 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.
- (3) Where the underlying exposures are themselves securitisation positions, in a case where this is not prohibited in relation to the originator, sponsor or original lender by applicable FCA or PRA rules, the trustees or managers must also monitor the exposures underlying those positions.
- (4) The trustees or managers of an occupational pension scheme who are not the originator, sponsor or original lender holding a securitisation position must at least—
- (a) in the case of a securitisation other than a fully-supported ABCP programme, regularly perform stress tests on the cash flows and collateral values supporting the underlying exposures or, in the absence of sufficient data on cash flows and collateral values, stress tests on loss assumptions, having regard to the nature, scale and complexity of the risk of the securitisation position;
 - (b) in the case of a fully-supported ABCP programme, regularly perform stress tests on the solvency and liquidity of the sponsor;
 - (c) ensure internal reporting to the trustees or managers so that they are aware of the material risks arising from the securitisation position and so that those risks are adequately managed;
 - (d) be able to demonstrate to the Pensions Regulator, upon request, that they have a comprehensive and thorough understanding of the securitisation position and its underlying exposures and that they have implemented written policies and procedures for the risk management of the securitisation position and for maintaining records of the verifications and due diligence in accordance with regulation 32B and of any other relevant information; and
 - (e) in the case of exposures to a fully-supported ABCP programme, be able to demonstrate to the Pensions Regulator, upon request, that they have a comprehensive and thorough understanding of the credit quality of the sponsor and of the terms of the liquidity facility provided.

Due-diligence requirements for occupational pension schemes: delegation of investment management decisions

32D.—(1) Paragraph (2) applies where—

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

- (i) have given a relevant institutional investor (“the managing party”) authority to make investment management decisions that might expose the trustees or managers to a securitisation, and
- (ii) instruct the managing party to fulfil any of their obligations under regulations 32B and 32C in respect of any exposure to a securitisation arising from those decisions, and
- (b) the managing party fails to fulfil an obligation to which those instructions relate.
- (2) The trustees or managers of the occupational pension scheme are not to be regarded as responsible for the failure to comply with the obligation in question.
- (3) In this regulation “relevant institutional investor” means an institutional investor which is an authorised person.”.
- (8) In regulation 35 (interpretation of Part 8), in the definition of “relevant requirement”, after paragraph (b) insert—
 - “(ba) by regulation 8A (restriction on establishment of an SSPE),”.
- (9) After regulation 36 insert—

“Monitoring and enforcement by Pensions Regulator

- 36A.**—(1) The Pensions Regulator must maintain arrangements designed to enable it to determine whether trustees or managers of occupational pension schemes are complying with the requirements of regulations 8A(2), 32B and 32C.
- (2) The Pensions Regulator must also maintain arrangements for enforcing compliance by trustees or managers of occupational pension schemes with those requirements.”.
- (10) After regulation 52 insert—

“Occupational pension schemes: savings relating to pre-commencement securitisations

- 52A.**—(1) Regulations 32B to 32D (due diligence requirements for occupational pension schemes) do not apply in relation to pre-commencement securitisations.
- (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—
 - (a) the continued application, in relation to the obligations of trustees or managers of occupational pension schemes in connection with securitisation positions of pre-commencement securitisations other than pre-2019 securitisations, of Article 5 of the EU Securitisation Regulation 2017 (due-diligence requirements for institutional investors), as that Article had effect immediately before the main commencement day;
 - (b) the continued application, in relation to the holding by occupational pension schemes of securitisation positions of pre-2019 securitisations, of paragraph 5 of Article 43 of the EU Securitisation Regulation 2017 (transitional provisions), as that paragraph had effect immediately before the main commencement day.
- (3) In its application by virtue of paragraph (2)(a), Article 5 of the EU Securitisation Regulation 2017 is to be read as if—
 - (a) references to any provision of Articles 6 to 9 of the EU Securitisation Regulation 2017 were references to that provision so far as applied in relation to pre-commencement securitisations by relevant rules, and

- (b) in paragraph 5, the reference to “another institutional investor” did not include an AIFM unless the AIFM falls within paragraph (e) of the definition of “institutional investor” in regulation 3 of these Regulations.
- (4) In paragraph (3)(a) “relevant rules” means—
 - (a) in the case of a PRA-authorised person, rules made by the PRA under section 137G of FSMA 2000;
 - (b) in any other case, designated activity rules made by the FCA by virtue of regulation 5.
- (5) In regulation 36A (monitoring and enforcement by Pensions Regulator), the reference to the requirements of regulations 32B and 32C includes a reference to the requirements of Article 5 of the EU Securitisation Regulation 2017, so far as remaining in force by virtue of paragraph (2).
- (6) In this regulation—
 - “AIFM” has the meaning given in regulation 4 of the Alternative Investment Fund Managers Regulations 2013⁽⁶⁾;
 - “pre-2019 securitisations” has the same meaning as in regulation 52;
 - “pre-commencement securitisations” means—
 - (a) securitisations the securities of which were issued before the main commencement day, 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 the main commencement day, and
 - (iii) no new securitisation positions of the securitisations have been created on or after that day.”.
- (11) Before Schedule 1 insert the Schedule A1 set out in Schedule 1 to these Regulations.
- (12) In Schedule 3 (transitional provisions), in paragraph 2 (STS securitisations on list maintained by FCA under EU Securitisation Regulation 2017), after sub-paragraph (4) insert—
 - “(5) In relation to a securitisation that is included on the list referred to in regulation 10(2) as a result of sub-paragraph (1)—
 - (a) the reference in regulation 32B(5)(c) to any applicable designated activity rules relating to the notification mentioned in regulation 10(1) is to be read as a reference to Article 27 of the EU Securitisation Regulation 2017⁽⁷⁾, and
 - (b) the references in regulation 32B(8) and paragraph 7 of Schedule A1 to the STS notification is to be read as a reference to the notification to the FCA under Article 27(1) of the EU Securitisation Regulation 2017.”.

⁽⁶⁾ S.I. 2013/1773. Regulation 4 was amended by S.I. 2019/328.

⁽⁷⁾ EUR 2017/2402. Article 27 was amended by S.I. 2019/660.