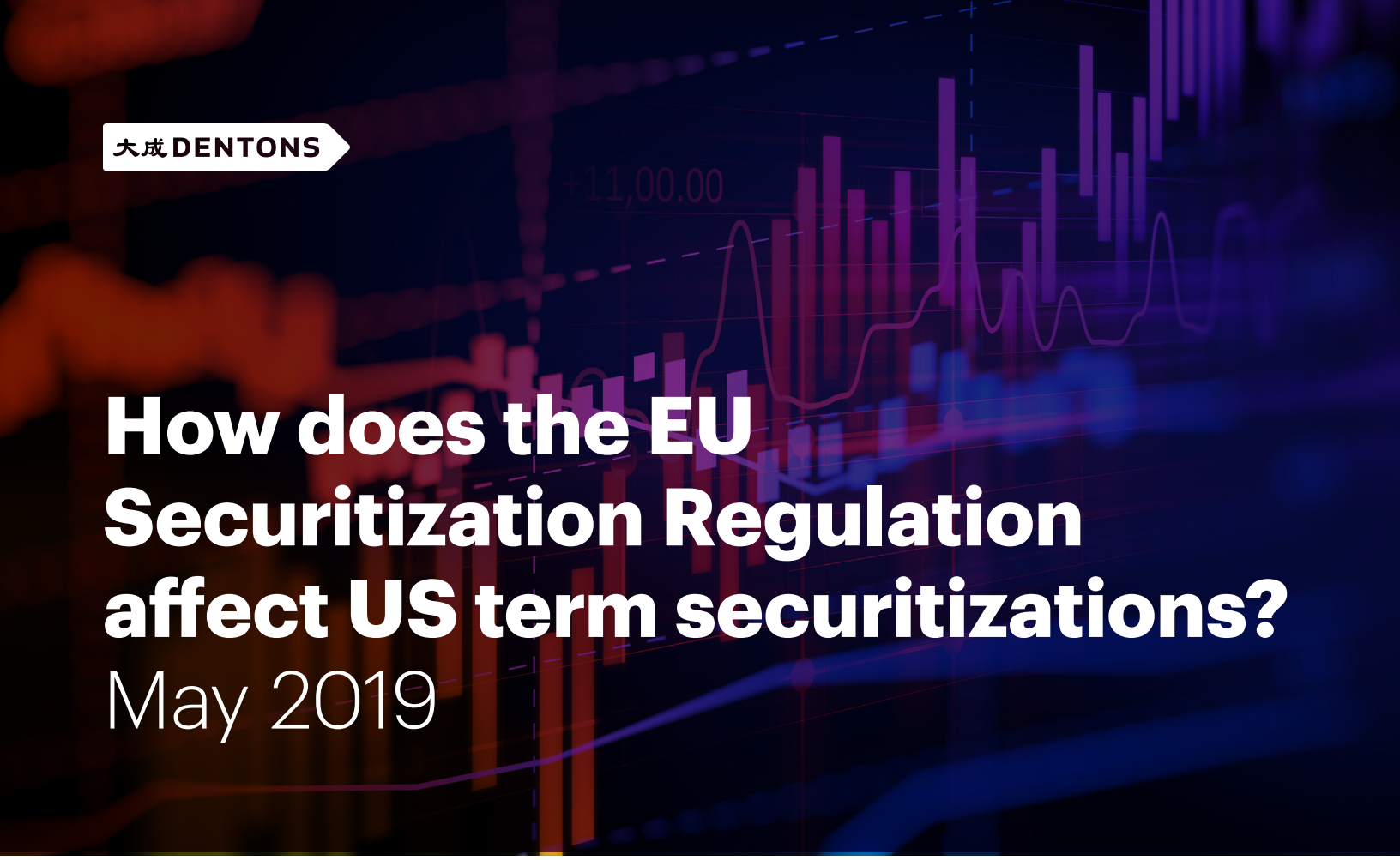

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How does the EU Securitization Regulation affect US term securitizations?

May 2019

The new European Union Securitization Regulation (the Regulation) is effective for securitizations issuing securities on or after January 1, 2019.

The Regulation imposes requirements on EU institutional investors (defined below), as well as on securitization sponsors, originators and issuers that are subject to EU jurisdiction. Importantly, the requirements imposed on EU institutional investors apply to them regardless of whether the issuer is subject to EU jurisdiction. Accordingly, the Regulation has an impact on term securitizations issued by US issuers as long as the securities are offered and sold in the EU, under Regulation S or otherwise.

Under the Regulation, the EU institutional investor must make its own determination as to whether the securitization complies with the Regulation. One of the Regulation requirements is that a risk retainer retain a 5 percent economic interest, meeting requirements that differ from (and in some ways are greater than) the requirements under the US Credit Risk Retention rules. Accordingly, a gating question for an investor to determine whether the securitization complies with the Regulation, is whether a risk retainer has retained such an interest. It should also be noted that EU institutional investors are subject to other due diligence requirements aside from verifying satisfaction of the 5 percent risk retention requirement.

US issuers that are not subject to EU jurisdiction, and that offer and sell securitizations that may be sold to EU investors, should include in the offering documents appropriate disclosure about the Regulation. Such disclosure should describe the relevant risks to EU investors, and should state whether or not a risk retainer will retain an economic interest designed to meet the requirements under the Regulation. However such disclosure should not state any conclusion as to whether the securitization complies with the requirements under the Regulation.

Below, Dentons details the requirements under the Regulation.

1. DOES THE EUROPEAN UNION (EU) SECURITIZATION REGULATION (REGULATION) AFFECT US TERM SECURITIZATIONS[1]?

Yes, if there is a "securitization" and:

a. The securitization notes are to be offered to EU institutional investors[2] or (currently) entities that are within an EU banking group (on a consolidated basis); or

b. The sponsor, originator or original lender is supervised or established in the EU, or is within the consolidated group of an EU bank.

The scope of EU institutional investors has expanded to include non-EU AIFMs in respect of any fund marketed into the EU; UCITS funds, including UCITS management companies; and EU pension funds, including their appointed investment managers. Also included are EU-regulated banks, including investment firms; EU-regulated insurers, including reinsurers; and AIFMs, whether established in the EU or with a full EU passport.

Although the Regulation is not expressly limited to originators, sponsors, original lenders and SSPEs3 established or supervised in the EU, we would interpret many of the provisions as applying only to such originators, sponsors, original lenders and subsidiaries of EU banks.

2. WHAT IS A "SECURITIZATION" UNDER THE REGULATION?

A "securitization" is defined as "a transaction or scheme, whereby the credit risk associated with an exposure or a pool of exposures is **tranched**, 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 [i.e., payment does not depend, for example, on either changes in the market value of a property or any guarantee of the notes by a corporate];

a. The **subordination of tranches**[4] determines the distribution of losses during the ongoing life of the transaction or scheme [this would typically exclude subordination through the issuance of ordinary shares, and therefore structural subordination; also, some commentators argue that "during the ongoing life" precludes single-asset securitizations from being a "securitization" under the Regulation]; and

b. The transaction or scheme does not create exposures which possess all of the characteristics listed in Article 147(8) of Regulation (EU) No 575/2013 [this is "specialized lending," which is, in essence, (i) debt exposures to an entity created specifically to acquire and/or operate one or more physical assets, (ii) where the contractual arrangements give the lenders a substantial degree of control over the assets and the income they generate and (iii) where the debt is repaid primarily by the income generated from the assets being financed. EU credit institutions and investment firms have different regulatory capital rules for holding specialized lending exposures].

3. WHAT ARE THE KEY REQUIREMENTS UNDER THE REGULATION?

3.1 Risk retainer to hold not less than 5 percent material net economic interest until the notes have been redeemed [5]

There is no significant change from the previous risk-retention requirements under the EU Capital Requirements Regulation, under which the sponsor,[6] originator[7] or original lender needs to hold not less than 5 percent material net economic interest until the notes have been redeemed, except that a new requirement has been added that "an entity shall not be considered to be an originator where the entity has been established or operates for the sole purpose of securitizing exposures."

Regulatory technical standards may be published in due course clarifying this requirement—draft regulatory technical standards[8] have proposed to clarify the meaning of "sole purpose" by stating that an entity shall be deemed not to have been established, or to operate, for the "sole purpose" of securitizing exposures if it satisfies each of the following conditions at the closing of the securitization:

a. It has a business strategy and the capacity to meet payment obligations consistent with a broader business enterprise and involving material support from capital, assets, fees or other income available to it, but disregarding any exposures to be securitized by that entity and any interests retained, or proposed to be retained, as well as any corresponding income from such exposures and interests;

b. It has been established and operates for purposes consistent with a broader business enterprise; and

c. It has sufficient decision makers with the required experience to enable it to pursue the established business strategy, as well as an adequate corporate governance structure.

As with the previous Capital Requirements Regulation regime, the following methods qualify as a retention of a material net economic interest of not less than 5 percent for the purposes of the Regulation:

a. The retention of not less than 5 percent of the nominal value of each of the tranches sold or transferred to investors (i.e., vertical slice);

b. In the case of revolving securitizations or securitizations of revolving exposures, the retention of the originator's interest of not less than 5 percent of the nominal value of each of the securitized exposures (this is used in, e.g., in master trust structures);

c. The retention of randomly selected exposures, equivalent to not less than 5 percent of the nominal value of the securitized exposures, where such exposures would otherwise have been securitized in the securitization (provided that the number of potentially securitized exposures is not less than 100 at origination);

d. The retention of the first loss tranche and, where such retention does not amount to 5 percent of the nominal value of the securitized exposures, if necessary, other tranches having the same or a more severe risk profile than those transferred or sold to investors and not maturing any earlier than those transferred or sold to investors, so that the retention equals in total not less than 5 percent of the nominal value of the securitized exposures; or

e. The retention of a first loss exposure of not less than 5 percent of every securitized exposure in the securitization.

The EU securitization market has construed the requirement that a "type (b) originator" purchases "a third party's exposures for its own account" as requiring that such entity owns, or is under a binding obligation to purchase, the receivables at least five business days before it securitizes such receivables.

A number of deals involve a sponsor (both with substance and which was (pre-securitization) exposed to the risk of losses in relation to the securitized exposures) holding the risk retention notes or certificates through a wholly-owned subsidiary.

Where the EU retained interest is a first loss tranche, it cannot receive principal payments (or be redeemed in full or in part) that would reduce its principal amount below 5 per cent of the nominal value of the securitized assets at closing while the offered, senior notes are outstanding (this does not stop interest being payable on the retention notes).

3.2 EU institutional investors to conduct appropriate due diligence,[9] including:

- (Unless the originator or original lender is an EU credit institution or an investment firm as defined in points (1) and (2) of Article 4(1) of Regulation (EU) No 575/2013), the originator or original lender grants all the credits giving rise to the underlying exposures on the "basis of sound and well-defined criteria and clearly established processes for approving, amending, renewing and financing those credits and 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;
- The originator, sponsor or original lender retains, on an ongoing basis, a material net economic interest of not less than 5 percent, and discloses the risk retention to institutional investors;
- The originator, sponsor or SSPE has, where applicable, made available the information required by Article 7 in accordance with the frequency and modalities provided for in that Article (see below); and
- A due diligence assessment that enables it to assess the risks involved in holding a securitization position, including: (a) the risk characteristics of the individual securitization position and of the underlying exposures; and all the structural features of the securitization that can materially impact the performance of the securitization 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.

3.3 EU institutional investors to conduct ongoing monitoring

EU institutional investors shall establish appropriate written procedures that are proportionate to the risk profile of the securitization position and, where relevant, to the institutional investor's trading and non-trading book, in order to monitor, on an ongoing basis, compliance with the points in paragraph 3.2 above and the performance of the securitization position and of the underlying exposures (including monitoring of the exposure type, the percentage of loans more than 30, 60 and 90 days past due, default rates, prepayment rates, loans in foreclosure, recovery rates, repurchases, loan modifications, payment holidays, collateral type and occupancy, frequency distribution of credit scores or other measures of creditworthiness across underlying exposures, industry and geographical diversification, and frequency distribution of loan-to-value ratios with bandwidths that facilitate adequate sensitivity analysis).[10]

3.4 SSPE reporting

Subject to the analysis below in paragraph 3.4.4 on the applicability of the transparency and reporting requirements in Article 7 to non-EU originators, sponsors and SSPEs, US issuers targeting EU institutional investors will need to make available sufficient information to enable such investors to comply with paragraphs 3.2 and 3.3 above, and should[11] make available to investors and (upon request) to potential investors:[12]

3.4.1 (Before pricing of the relevant securitization) full documentation essential for the understanding of the transaction.[13] This could include preparing a separate transaction summary if a US PPM does not contain all of the following:

a. Details regarding the structure of the deal, including the structure diagrams containing an overview of the transaction, the cash flows and the ownership structure;

b. Details regarding the exposure characteristics, cash flows, loss waterfall, credit enhancement and liquidity support features;

c. Details regarding the voting rights of the holders of a securitization position and their relationship to other secured creditors; and

d. A list of all triggers and events referred to in the documents provided in accordance with point (b) that could have a material impact on the performance of the securitization position.

3.4.2 Minimum ongoing quarterly (or, for ABCP, monthly)[14] loan level data and investor reports (within a month of the relevant interest payment date), containing the following:

a. All materially relevant data on the credit quality and performance of underlying exposures;

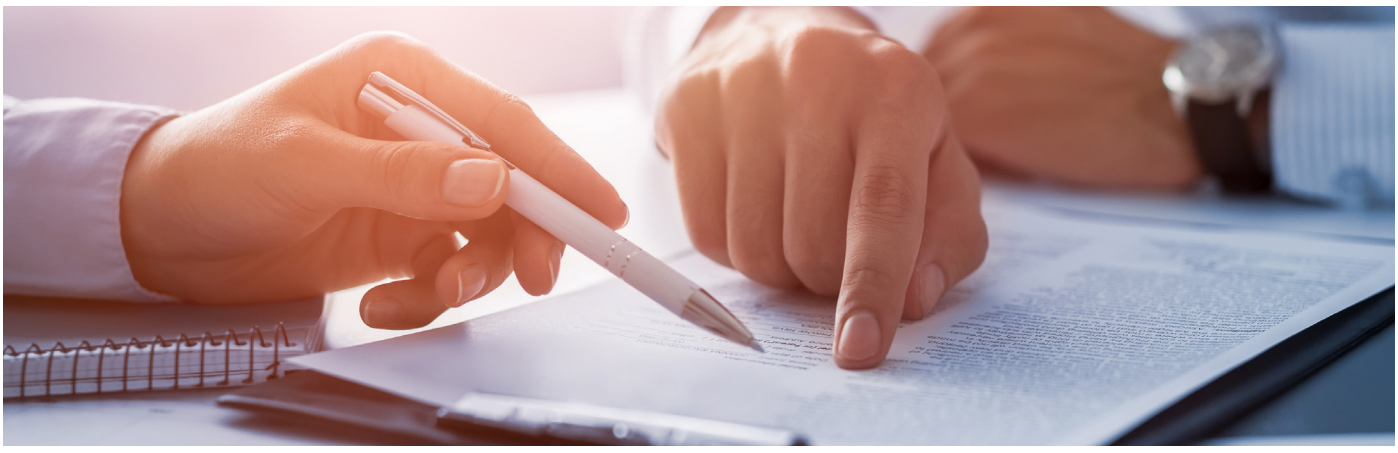
b. Information on events which trigger changes in the priority of payments or the replacement of any counterparties, and data on the cash flows generated by the underlying exposures and by the liabilities of the securitization; and

c. Information about the risk retained, including the type of risk retention method; and

3.4.3 (Subject to exceptions) any inside information relating to the securitization that the originator, sponsor or SSPE is obliged to make public in accordance with Article 17 of Regulation (EU) No 596/2014 of the European Parliament and of the Council on insider dealing and market manipulation or (if such regulation is not applicable) "any significant event such as: (i) a material breach of the obligations provided for in the transaction documents, including any remedy, waiver or consent subsequently provided in relation to such a breach; (ii) a change in the structural features that can materially impact the performance of the securitization; (iii) a change in the risk characteristics of the securitization or of the underlying exposures that can materially impact the performance of the securitization; (iv) any material amendment to transaction documents."

There is an exception to these transparency obligations if national or EU laws on confidentiality or data protection or confidentiality obligations restrict such reporting, unless such confidential information is anonymized or aggregated.

ESMA is responsible for developing technical standards (consisting of regulatory technical standards and implementing technical standards) to specify the information and standardized templates that the reporting entity shall provide in order to comply with its reporting obligations under Article 7 of the Regulation. Although ESMA has published its final report on the disclosure technical standards and related templates, they have not yet been adopted by the European Commission. Instead, the transitional provisions set out in the Regulation apply. These transitional provisions require that the templates[15] developed under Regulation (EU) No 462/2013 (the so-called CRA III Regulation) be used to meet the quarterly reporting obligations until the new templates are ready.



If a prospectus has to be prepared in compliance with the EU Prospectus Directive, a US issuer will need to share such information with a new ESMA authorized securitization repository or (where no such regulated securitization repository has been established) on a website complying with Article 7(2) of the Regulation. Typically, US private placement memoranda will not seek to comply with the EU Prospectus Directive, and therefore this requirement will not apply.

3.4.4 Although the Regulation does affect US term securitizations, the jurisdictional scope of the transparency and reporting requirements in Article 7 of the Regulation is unclear.

Paragraphs 1(c) and 1(d) of Article 5 of the Regulation set out how an EU institutional investor is required to verify the satisfaction of the risk retention obligation by the originator, sponsor or original lender if established in the EU and if established in a third country, respectively. Paragraph 1(c) states that where the originator, the sponsor and the original lender is established in the EU the risk retention must be disclosed "in accordance with Article 7" transparency requirements (which include the specified reporting templates). Paragraph 1(d) states that where the originator, sponsor or the original lender is established in a third country the risk retention must be disclosed, but unlike paragraph 1(c) it does not say that such disclosure is to be made "in accordance with Article 7". This would suggest that, although in relation to third country originators sponsors and original lenders the reporting entity does need to disclose their risk retention, it does not need to do so in the form prescribed by the technical requirements of Article 7 of the Regulation, including the specified reporting templates. This argument finds further support in Article 5 of the Regulation, where paragraph 1(e) discusses disclosure required under Article 7 of the Regulation as only being made by an originator, sponsor or SSPE "where applicable", which can be interpreted as being in relation to transactions where the originator, sponsor or original lender is established in the EU.

On the other hand, paragraph 1(e) of Article 5 and Article 7 of the Regulation read together can be interpreted such that even where the originators and sponsors are non-EU entities, they nonetheless impose the same or similar due diligence and transparency requirements on EU investors investing in securitisations carried out by non-EU originators or sponsors. This interpretation could be said to be supported by the policy objectives of the Regulation, for example enabling EU investors to properly assess the risks and make an informed assessment on the creditworthiness of a given securitisation investment and promoting transparency in the market.

It is uncertain what the EU regulatory bodies intended the reading to be of the relevant provisions of Article 5 of the Securitisation Regulation and we are awaiting further guidance as to the extent to which US deals need to comply with Article 7 before EU institutional investors can invest in such deals. There continues to be ongoing discussions at the EU level as well as among market participants in relation to the interpretation of the jurisdictional scope of the Securitisation Regulation including, in particular, the transparency and reporting requirements and their applicability to non-EU originators, sponsors and original lenders and to EU investors in non-EU deals.

In the meantime, we have observed in the market that US issuers are not seeking to actively comply with the transparency and reporting requirements of Article 7 of the Regulation. For example, the CRA III templates do not fit neatly with US securitizations and, typically, US issuers will not seek to comply with any applicable CRA III loan-by-loan and quarterly investor report template nor will they undertake to conform to any of the final templates published by ESMA. Moreover, we have seen a number of recent US PPMs containing language along the lines of:

"The information to be provided to Noteholders will be the information referred to in 'The Indenture—Reports to Noteholders.' The securitization transaction described in this private placement memorandum is not being structured to ensure compliance by any person with the EU Transparency Requirements and the information referred to in 'The Indenture—Reports to Noteholders' might not satisfy the transparency requirements set out in Article 7 of the EU Securitization Regulation."

It is therefore for the EU institutional investors to make their own assessment as to whether any reports to be provided to investors in relation to the transaction is likely to be sufficient for the purposes of such investors' compliance with the Regulation and in particular their due diligence obligations under Article 5 of the Regulation.

3.5 Credit granting standards[16] (other than for trade receivables that are not originated in the form of a loan)[17] originators, sponsors and original lenders shall:

- Apply to exposures to be securitized the same sound and well-defined criteria for credit-granting that they apply to non-securitized exposures. To that end, the same clearly established processes for approving and, where relevant, amending, renewing and refinancing credits shall be applied; and
- Have effective systems in place to apply those criteria and processes in order to ensure that credit-granting is based on a thorough assessment of the obligor's creditworthiness taking appropriate account of factors relevant to verifying the prospect of the obligor meeting his obligations under the credit agreement.

Article 9(3) also provides that: "Where an originator purchases a third party's exposures for its own account and then securitises them, that originator shall verify that the entity which was, directly or indirectly, involved in the original agreement which created the obligations or potential obligations to be securitised fulfils the [above requirements]," unless both the securitized exposures were created before the Mortgage Credit Directive entered into force and such originator (if it has not been engaged in the original credit-granting of exposures to be securitized, or is not active in the credit-granting of the specific types of exposures to be securitized) obtained all the necessary information to assess whether the criteria applied in the credit-granting for those exposures are as sound and well defined as the criteria applied to non-securitized exposures.

Although we would interpret Article 9 of the Regulation as applying solely to originators, sponsors and original lenders established or supervised in the EU, one of the key due diligence items required before an EU institutional investor can invest is that "the originator or original lender grants all the credits giving rise to the underlying exposures on the basis of sound and well-defined criteria and clearly established processes for approving, amending, renewing and financing those credits and 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".

Nevertheless, we have seen a number of recent US PPMs containing language along the lines of:

"Potential investors should be aware that the Sponsor does not have information available to it as to the underwriting standards that were applied in originating or modifying the Mortgage Loans, and neither the Sponsor nor any of its affiliates has re-underwritten any of the Mortgage Loans in connection with the acquisition or securitization thereof. In addition, no diligence has been conducted by the Sponsor or any other entity to confirm that, in underwriting or modifying the Mortgage Loans, the related originator (including in connection with a modification) conformed to its underwriting standards in effect at the time. See "—Lack of Information Regarding Underwriting Standards for the Mortgage Loans" in this private placement memorandum. Therefore, no representation is made that the EU Credit-Granting Requirement will be satisfied."

Setting out a summary of the original lender's lending criteria or underwriting standards would be desirable, if possible. Similarly, disclosing the results of any pre-offering review/agreed-upon procedures due diligence as to whether these underwriting standards were met would be desirable.

Even where it is not possible to include such a summary, it would be desirable to summarize the servicer's criteria and clearly established processes for amending securitized exposures, and their systems to apply those criteria and processes to ensure that any amendments to securitized exposures are based on a thorough assessment of the relevant obligor's creditworthiness.

3.6 Limits on cherry picking

Securitized assets should not be chosen such that they perform significantly worse than "comparable assets held on the balance sheet of the originator" over the life of the transaction (to a maximum of four years).[18]

3.7 Other than in very limited circumstances, no securitizations of securitization positions.[19]

This seeks to avoid the resurgence of, e.g., collateralized debt obligation (CDO) squared transactions.

3.8 Restrictions on the securitization of self-verified mortgage loans after the EU Mortgage Credit Directive came into force[20]

As with other provisions in the Regulation, there is debate as to whether this applies to US issuers. One recent US PPM disclosed:

"... in relation to any Mortgage Loans that were originated on or after March 20, 2014 (which represent less than 5% of the Mortgage Loans by aggregate Unpaid Principal Balance as of the Cut-off Date), the Sponsor believes (taking into account the CFPB's ability-to- repay rules which became effective on January 10, 2014) that the original lender granted such Mortgage Loans on the basis of sound and well-defined criteria and clearly established processes, and had effective systems in place to apply those criteria and processes to ensure that such credit-granting was based on a thorough assessment of the obligor's creditworthiness and therefore such Mortgage Loans should not be self-certification loans within the meaning of Article 9(2) of the EU Securitization Regulation ..."

3.9 Restrictions on sales to retail investors[21]

Securitizations cannot be offered to EU retail investors other than in the limited circumstances set out in Article 3 of the Regulation.

4. WHAT IS AN 'STS'?

It is a designation that a securitization is "simple, transparent and standardized," and can allow an EU institutional investor beneficial regulatory capital treatment. However, securitizations by US issuers are not eligible to be classified as STS.

5. EFFECTIVE DATE

The Regulation came into effect on January 1, 2019.

Grandfathering for pre-January 1, 2019, deals, unless new securities are issued.[22]

NOTES

1. Excluding ABCP.
2. "institutional investor" means an investor that is one of the following:
    a. an insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC;
    b. a reinsurance undertaking as defined in point (4) of Article 13 of Directive 2009/138/EC;
    c. an institution for occupational retirement provision falling within the scope of Directive (EU) 2016/2341 of the European Parliament and of the Council in accordance with Article 2 thereof, unless a Member State has chosen not to apply that Directive in whole or in part to that institution in accordance with Article 5 of that Directive; or an investment manager or an authorized entity appointed by an institution for occupational retirement provision pursuant to Article 32 of Directive (EU) 2016/2341;
    d. an alternative investment fund manager (AIFM) as defined in point (b) of Article 4(1) of Directive 2011/61/EU that manages and/or markets alternative investment funds in the Union;
    e. an undertaking for the collective investment in a transferable securities (UCITS) management company, as defined in point (b) of Article 2(1) of Directive 2009/65/EC;
    f. an internally managed UCITS, which is an investment company authorized in accordance with Directive 2009/65/EC and which has not designated a management company authorized under that Directive for its management;
    g. a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 for the purposes of that Regulation or an investment firm as defined in point (2) of Article 4(1) of that Regulation.
3. 'Securitization 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 securitizations, the activities of which are limited to those appropriate to accomplishing that objective, the structure of which is intended to isolate the obligations of the SSPE from those of the originator.
4. "Tranche" is defined in the Regulation as meaning 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.
5. That interest shall be measured at the origination and shall be determined by the notional value for off-balance-sheet items. The material net economic interest shall not be split amongst different types of retainers and not be subject to any credit risk mitigation or hedging.
6 "Sponsor" means a credit institution, whether located in the EU or not, as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013, or an investment firm as defined in point (1) of Article 4(1) of Directive 2014/65/EU other than an originator, that:(a) establishes and manages an asset-backed commercial paper program or other securitization that purchases exposures from third-party entities; or (b) establishes an asset-backed commercial paper program or other securitization that purchases exposures from third-party entities and delegates the day-to-day active portfolio management involved in that securitization to an entity authorized to perform such activity in accordance with Directive 2009/65/EC, Directive 2011/61/EU or Directive 2014/65/EU.
7. "Originator" means an entity that (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 securitized; or (b) purchases a third party's exposures on its own account and then securitizes them.
8. Draft Regulatory Technical Standards specifying the requirements for originators, sponsors and original lenders relating to risk retention pursuant to Article 6(7) of the Regulation, contained in a consultation paper published by the EBA on 15 December 2017.
9. See Article 5 of the Regulation.
10 See Article 5(4) of the Regulation for a full list of these requirements.
11 See footnote 9.
12 Recital (16) states: "Originators, sponsors and SSPEs should make available in the investor report all materially relevant data on the credit quality and performance

of underlying exposures, including data allowing investors to clearly identify delinquency and default of underlying debtors, debt restructuring, debt forgiveness, forbearance, repurchases, payment holidays, losses, charge offs, recoveries and other asset performance remedies in the pool of underlying exposures.
The investor report should include in the case of a securitisation which is not an ABCP transaction data on the cash flows generated by underlying exposures and by the liabilities of the securitisation, including separate disclosure of the securitisation position's income and disbursements, namely scheduled principal, scheduled interest, prepaid principal, past due interest and fees and charges, and data relating to the triggering of any event implying changes in the priority of payments or replacement of any counterparties, as well as data on the amount and form of credit enhancement available to each tranche."

13 Including:

- A prospectus or (where there is no prospectus) a deal summary;
- Closing transaction documents (excluding legal opinions);
- The asset sale agreement, assignment, novation or transfer agreement and any relevant declaration of trust;
- The derivatives and guarantee agreements, as well as any relevant documents on collateralization arrangements where the exposures being securitized remain exposures of the originator;
- The servicing, back-up servicing, administration and cash management agreements;
- The trust deed, security deed, agency agreement, account bank agreement, guaranteed investment contract, incorporated terms or master trust framework or master definitions agreement or such legal documentation with equivalent legal value;
- Any relevant intercreditor agreements, derivatives documentation, subordinated loan agreements, start-up loan agreements and liquidity facility agreements.

Article 22(5) states that the originator and the sponsor shall be responsible for compliance with Article 7. The information required by point (a) of the first sub-paragraph of Article 7(1) shall be made available to potential investors before pricing upon request. The information required by points (b) to (d) of the first sub-paragraph of Article 7(1) shall be made available before pricing at least in draft or initial form. The final documentation shall be made available to investors at the latest 15 days after closing of the transaction.

14. Significant events/material changes to be reported without delay.

15. Annexes I to VIII of Delegated Regulation (EU) 2015/3. This delegated regulation can be accessed here.

16 Recital (28) states: "It is essential to prevent the recurrence of 'originate to distribute' models. In those situations lenders grant credits applying poor and weak underwriting policies as they know in advance that related risks are eventually sold to third parties. Thus, the exposures to be securitized should be originated in the ordinary course of the originator's or original lender's business pursuant to underwriting standards that should not be less stringent than those the originator or original lender applies at the time of origination to similar exposures which are not securitized. Material changes in underwriting standards should be fully disclosed to potential investors. ..."

17 Recital (14) states: "Originators, sponsors and original lenders should apply to exposures to be securitized the same sound and well-defined criteria for credit-granting which they apply to non-securitized exposures. However, to the extent that trade receivables are not originated in the form of a loan, credit-granting criteria need not be met with respect to trade receivables."

18 See Article 6(2): "Originators shall not select assets to be transferred to the SSPE with the aim of rendering losses on the assets transferred to the SSPE, measured over the life of the transaction, or over a maximum of 4 years where the life of the transaction is longer than four years, higher than the losses over the same period on comparable assets held on the balance sheet of the originator."

Recital 11 states: "Originators or sponsors should not take advantage of the fact that they could hold more information than investors and potential investors on the assets transferred to the SSPE, and should not transfer to the SSPE, without the knowledge of the investors or potential investors, assets whose credit-risk profile is higher than that of comparable assets held on the balance sheet of the originators. Any breach of that obligation should be subject to sanctions to be imposed by competent authorities, though only when such a breach is intentional. Negligence alone should not be subject to sanctions in that regard. However, that obligation should not prejudice in any way the right of originators or sponsors to select assets to be transferred to the SSPE that ex ante have a higher-than-average credit-risk profile compared to the average credit-risk profile of comparable assets that remain on the balance sheet of the originator, as long as the higher credit-risk profile of the assets transferred to the SSPE is clearly communicated to the investors or potential investors."

19 See Article 8 and Recital (8) of the Securitisation Regulation.

20 See Article 9(2) and Recital (28): "... In the case of securitisations where the underlying exposures are residential loans, the pool of loans should not include any loan that was marketed and underwritten on the premise that the loan applicant or, where applicable intermediaries, were made aware that the information provided might not be verified by the lender."

21 See Article 3 of the Regulation.

22 In the case of securitizations which do not involve the issuance of securities, any references to "securitisations the securities of which were issued" shall be deemed to mean "securitisations the initial securitisation positions of which are created," provided that this Regulation applies to any securitizations that create new securitzation positions on or after January 1, 2019.

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