SECURITISATION REGULATION IMPLEMENTATION INSTRUMENT 2018

Powers exercised

A. The Financial Conduct Authority makes this instrument in the exercise of:
   (1) the following powers and related provisions in or under the Financial Services and Markets Act 2000 (“the Act”):
      (a) section 137A (The FCA’s general rules);
      (b) section 137T (General supplementary powers);
      (c) section 139A (Power of the FCA to give guidance);
      (d) section 247 (Trust scheme rules);
      (e) section 261I (Contractual scheme rules); and
   (2) regulation 6(1) (FCA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228).

B. The rule-making powers listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on 1 January 2019.

Amendments to the Handbook

D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Glossary of definitions</td>
<td>Annex A</td>
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<tr>
<td>Prudential sourcebook for Investment Firms (IFPRU)</td>
<td>Annex B</td>
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<tr>
<td>Collective Investment Schemes sourcebook (COLL)</td>
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<td>Investment Funds sourcebook (FUND)</td>
<td>Annex D</td>
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</tbody>
</table>

Notes

E. In this instrument, the notes (indicated by “Note:” or “Note:”) are included for the convenience of readers but do not form part of the legislative text.

Citation

F. This instrument may be cited as the Securitisation Regulation Implementation Instrument 2018.

By order of the Board
13 December 2018
Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

Securitisation Regulation


[Note: see https://eur-lex.europa.eu/eli/reg/2017/2402/oj]

Amend the following definitions as shown.

early amortisation provision

(2) (except in (1)) has the meaning in article 242(14) 242(16) of the EU CRR.

sponsor

(3) (in IFPRU and FUND) has the meaning in article 4(1)(14) of the EU CRR.
Annex B

Amendments to the Prudential sourcebook for Investment Firms (IFPRU)

In this Annex, underlining indicates new text and striking through indicates deleted text.

4 Credit risk

...

4.1 Application and purpose

...

Purpose

4.1.2 G This chapter:

...

(2) contains the rules that exercise the discretion afforded to the FCA as competent authority under articles 115, 119(5), 124(2), 125(3), 126(2), 178(1)(b), 243(2), 244(2), 245(2), 286(2), 298(4) and 380 of the EU CRR; and

...

...

4.12 Securitisation

Recognition of significant risk transfer

4.12.1 R (1) A firm must notify the FCA that it is relying on the deemed transfer of significant credit risk under article 243(2) 244(2) of the EU CRR (Traditional securitisation) or article 244(2) 245(2) of the EU CRR (Synthetic securitisation), including when this is for the purposes of article 337(5) of the EU CRR, no later than one month after the date of the transfer.

...

Significant risk transfer notifications and permissions

...

4.12.3 G The significant risk transfer requirements in articles 243 244 (Traditional securitisation) or 244 245 (Synthetic securitisation) of the EU CRR provide three options for a firm to demonstrate how it transfers significant credit risk for any given transaction:
(1) the originator does not retain more than 50% of the risk-weighted exposure amounts of mezzanine securitisation positions (as defined in article 242(18) of the EU CRR), where these are:

   (a) securitisation positions to which a risk weight lower than 1250% and higher than 25% applies in accordance with Sub-Sections 2 and 3 of Section 3 of Chapter 5 (Securitisation) of the EU CRR; and

   (b) more junior than the most senior position in the securitisation and more junior than any position in the securitisation rated credit quality step 1 or 2 subordinated to the senior securitisation position and more senior than the first loss tranche;

... Option 3

4.12.6 G For IFPRU 4.12.3G(3) (option 3), the FCA intends to grant permission for an originator to make its own assessment of significant risk transfer only where it is satisfied that:

   (2) the firm has appropriately risk-sensitive adequate internal risk management policies and methodologies in place to assess the transfer of risk; and

... Deduction or 1250% risk weighting

4.12.8 G A firm seeking to achieve capital relief by deducting or applying a 1250% risk weight where permitted under articles 243 or 244 or 245 of the EU CRR does not need to make the notification in IFPRU 4.12.1R. However, in such cases, a firm should consider whether the characteristics of the transaction are such that the FCA would reasonably expect prior notice of it.

... Significant risk transfer permissions

4.12.13 G A firm may apply for permissions under articles 243 244 (Traditional securitisation) or 244 245 (Synthetic securitisation) of the EU CRR to consider significant risk transfer to have been achieved without needing to
rely on options (1) or (2). The scope of such permission may be defined to cover a number of transactions or an individual transaction.

…

Implicit support and significant risk transfer

…

4.12.27 G …

(4) If a firm fails to comply with article 248(1) 250(1) of the EU CRR, the FCA may require it to disclose publicly that it has provided non-contractual support to the transaction.

…

TP 1 GENPRU and BIPRU waivers: transitional

…

Tables

1.9 R Table on internal model waivers

<table>
<thead>
<tr>
<th>Permission</th>
<th>Column A</th>
<th>Column B EU CRR reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4 Supervisory formula method for securitisation transactions</td>
<td>-BIPRU 9.12.3R</td>
<td>Art 259(1)(b)</td>
</tr>
<tr>
<td></td>
<td>-BIPRU 9.12.5R</td>
<td>Art 262 [deleted]</td>
</tr>
<tr>
<td></td>
<td>-BIPRU 9.12.21R (Where authorised by the firm’s IRB permission)</td>
<td></td>
</tr>
<tr>
<td>5 ABCP internal assessment approach</td>
<td>-BIPRU 9.12.20R (Where authorised by the firm’s IRB permission)</td>
<td>Art 259(3) [deleted]</td>
</tr>
<tr>
<td>Permission</td>
<td>Column A</td>
<td>Column B</td>
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<tr>
<td></td>
<td>FCA Rule (rule waiver or modification)</td>
<td>EU CRR reference</td>
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<tr>
<td>6</td>
<td>Exceptional treatment for liquidity facilities where pre-securitisation risk-weighted exposure amount cannot be calculated</td>
<td>BIPRU 9.11.10R as modified in accordance with BIPRU 9.12.28G (Where authorised by the firm’s IRB permission)</td>
</tr>
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</table>

1.10 R Table on other waivers and requirements

<table>
<thead>
<tr>
<th>Permission</th>
<th>Column A</th>
<th>Column B</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>FCA Rule (rule waiver or modification)</td>
<td>EU CRR Reference</td>
</tr>
</tbody>
</table>
| 5 | Traditional securitisation - recognition of significant risk transfer | - BIPRU 9.4.11R  
- BIPRU 9.4.12R  
(subject to conditions in BIPRU 9.4.15D) | Art 243(2), (3), (4) and (5) 244(2), (3) and (4) |
| 6 | Synthetic securitisation - recognition of significant risk transfer | - BIPRU 9.5.1R(6) and (7)  
(subject to conditions in BIPRU 9.5.1BD) | Art 244(2), (3), (4) and (5) 245(2), (3) and (4) |
| 7 | Securitisations of revolving exposures with early amortisation provisions - similar transactions | - BIPRU 9.3.11D  
- BIPRU 9.13.13R  
- BIPRU 9.13.14R  
- BIPRU 9.13.15R  
- BIPRU 9.13.16R  
- BIPRU 9.13.17R  
(subject to conditions in BIPRU 9.13.18G) | Art 256(7) [deleted] |
| ... | ... | ... |
### Sch 2 Notification and reporting requirements

<table>
<thead>
<tr>
<th>Handbook reference</th>
<th>Matter to be notified</th>
<th>Contents of notification</th>
<th>Trigger event</th>
<th>Time allowed</th>
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<tr>
<td>...</td>
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<tr>
<td><strong>IFPRU 4.12.1R</strong></td>
<td>Reliance on deemed transfer of significant risk under articles 243(2), 244(2) and 244(2), 245(2) of the EU CRR, including for the purposes of article 337(5) of the EU CRR</td>
<td>Sufficient information to allow the FCA to assess whether the possible reduction in risk-weighted exposure amounts achieved by the securitisation is justified by a commensurate transfer of credit risk to third parties</td>
<td>Intention to rely on deemed transfer of significant risk</td>
<td>Within a reasonable period before or after a relevant transfer, not being later than one month after the date of transfer</td>
</tr>
</tbody>
</table>
Annex C

Amendments to the Collective Investment Schemes sourcebook (COLL)

In this Annex, underlining indicates new text.

5 Investment and borrowing powers

5.2 General investment powers and limits for UCITS schemes

5.2.2 Table of application

This table belongs to COLL 5.2.1R.

<table>
<thead>
<tr>
<th>Rule</th>
<th>ICVC</th>
<th>ACD</th>
<th>Authorised fund manager of an AUT or ACS</th>
<th>Depositary of an ICVC, AUT or ACS</th>
<th>Authorised fund manager of an AUT or ACS, or ACD of an ICVC, that is a regulated money market fund</th>
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<tr>
<td>5.2.11R to 5.2.20R (exclud ing 5.2.17A R and 5.2.17B G)</td>
<td>x</td>
<td>x</td>
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<td></td>
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<tr>
<td>5.2.17A R and 5.2.17B G</td>
<td>x</td>
<td>x</td>
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</table>

Investment in securitisation positions
5.2.17A  R  Where an authorised fund manager is exposed to a securitisation that does not meet the requirements provided for in the Securitisation Regulation, it must, in the best interests of the investors in the relevant UCITS scheme, act and take corrective action, if appropriate.

[Note: article 50a of the UCITS Directive]

5.2.17B  G  Article 5 (Due diligence requirements for institutional investors) of the Securitisation Regulation applies to authorised fund managers in combination with COLL 5.2.17AR.
Annex D

Amendments to the Investment Funds sourcebook (FUND)

In this Annex, underlining indicates new text and striking through indicates deleted text.

3 Requirements for alternative investment fund managers

…

3.5 Investment in securitisation positions

Application

3.5.1 G This section applies to a full-scope UK AIFM of:

(1) a UK AIF;

(2) an EEA AIF; and

(3) a non-EEA AIF. [deleted]

3.5.2 G To ensure cross-sectoral consistency and remove misalignment between the interests of firms that repackage loans into tradable securities and originators within the meaning of article 4(41) of the BCD and AIFMs that invest in those securities or other financial instruments, the AIFMD level 2 regulation sets out:

(1) requirements that must be met by the originator, the sponsor or the original lender, for an AIFM to be allowed to invest on behalf of the AIF in securities or other financial instruments of this type issued after 1 January 2011; and;

(2) qualitative requirements that must be met by AIFMs which invest in these securities or other financial instruments on behalf of the AIF.

[Note: article 17 of AIFMD] [deleted]

Subordinate measures

3.5.3 G Articles 50 to 56 of the AIFMD level 2 regulation provide detailed rules supplementing the provisions in AIFMD on investment in securitisation positions. [deleted]

Application

3.5.4 R This section applies to a full-scope UK AIFM of:

(1) a UK AIF:
Corrective action

3.5.5  R  Where an AIFM is exposed to a securitisation that does not meet the requirements provided for in the Securitisation Regulation, it must, in the best interests of the investors in the relevant AIFs, act and take corrective action, if appropriate.

[Note: article 17 of AIFMD]

3.5.6  G  Article 41 of the Securitisation Regulation replaces the original article 17 of AIFMD with an amended provision. FUND 3.5.4R and 3.5.5R transpose article 17 of AIFMD, as amended.

3.5.7  G  A more general consequence of the replacement of article 17 of AIFMD is that from 1 January 2019, Section 5 (Investment in Securitisation Positions) of the AIFMD level 2 regulation no longer applies, subject to transitional provisions. Where the transitional provisions are inapplicable, article 5 (Due-diligence requirements for institutional investors) of the Securitisation Regulation (in combination with FUND 3.5.4R and 3.5.5R), completely replaces Section 5 (articles 50 to 56 inclusive) of the AIFMD level 2 regulation.

3.5.8  G  The relevant transitional provisions apply to certain securitisations issued during periods before 1 January 2019. They are set out in articles 43(5) and 43(6) of the Securitisation Regulation. Where the transitional provisions apply, they have the effect that article 51 of the AIFMD level 2 regulation, concerning requirements for retained interest, and the due-diligence requirements provided for in Section 5 of that regulation, may continue to apply to eligible securitisations, instead of article 5 of the Securitisation Regulation.