

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).

(1)	(2)
Glossary of definitions	Annex A
Prudential sourcebook for Investment Firms (IFPRU)	Annex B
Collective Investment Schemes sourcebook (COLL)	Annex C
Investment Funds sourcebook (FUND)	Annex D

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 Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012.
[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

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4.1 Application and purpose

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Purpose

4.1.2 G This chapter:

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- (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

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- 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.

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Implicit support and significant risk transfer

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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.

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TP 1 GENPRU and BIPRU waivers: transitional

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Tables

1.9 R Table on internal model waivers

	Permission	Column A FCA Rule (rule waiver or modification)	Column B EU CRR reference
...			
4	Supervisory formula method for <i>securitisation</i> transactions	BIPRU 9.12.3R BIPRU 9.12.5R BIPRU 9.12.21R (Where authorised by the <i>firm's IRB permission</i>)	Art 259(1)(b) Art 262 [deleted]
5	ABCP internal assessment approach	BIPRU 9.12.20R (Where authorised by the <i>firm's IRB permission</i>)	Art 259(3) [deleted]

	Permission	Column A FCA Rule (rule waiver or modification)	Column B EU CRR reference
6	Exceptional treatment for liquidity facilities where pre- <i>securitisation</i> risk-weighted exposure amount cannot be calculated	-BIPRU 9.11.10R as modified in accordance with <i>BIPRU 9.12.28G</i> (Where authorised by the firm's IRB permission)	Art 263(2) [deleted]
...			

1.10 R Table on other waivers and requirements

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

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Sch 2 Notification and reporting requirements

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

Annex C

Amendments to the Collective Investment Schemes sourcebook (COLL)

In this Annex, underlining indicates new text.

5 Investment and borrowing powers

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5.2 General investment powers and limits for UCITS schemes

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5.2.2 R Table of application

This table belongs to *COLL 5.2.1R*.

Rule	<i>ICVC</i>	<i>ACD</i>	<i>Authorised fund manager of an AUT or ACS</i>	<i>Depositary of an ICVC, AUT or ACS</i>	<i>Authorised fund manager of an AUT or ACS, or ACD of an ICVC, that is a regulated money market fund</i>
...					
5.2.11R to 5.2.20R (<u>excluding 5.2.17A R and 5.2.17B G</u>)		x	x		
<u>5.2.17A R and 5.2.17B G</u>	<u>x</u>	<u>x</u>	<u>x</u>		
...					

...

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

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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*;

(2) an EEA AIF; and

(3) a non-EEA 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*.