

**TECHNICAL STANDARDS (SECURITISATION REGULATION) (EU EXIT)
INSTRUMENT 2020**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”), being an appropriate regulator within the meaning of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the powers conferred by regulation 3 of the Regulations.

Pre-conditions to making

- B. The FCA is the appropriate regulator for the EU Regulations specified in Part 1 of the Schedule to the Regulations.
- C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5 of the Regulations.
- D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

Interpretation

- E. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

Modifications

- F. The following EU Regulation is amended in accordance with the Annex to this instrument.

Commission Delegated Regulation (EU) 2019/885 of 5 February 2019 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards specifying information to be provided to a competent authority in an application for authorisation of a third party assessing STS compliance

Commencement

- G. This instrument comes into force on IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020.

Citation

- H. This instrument may be cited as the Technical Standards (Securitisation Regulation) (EU Exit) Instrument 2020.

By order of the Board
30 September 2020

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

Annex

COMMISSION DELEGATED REGULATION (EU) 2019/885 of 5 February 2019 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards specifying information to be provided to a competent authority in an application for authorisation of a third party assessing STS compliance

~~(Text with EEA relevance)~~

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Article -1

Definitions

For the purposes of this Regulation, “IP completion day” has the meaning given in section 39 of the European Union (Withdrawal) Act 2020.

Article 1

Identification of the third party

1. An application for authorisation as referred to in Article 28(4) of Regulation (EU) 2017/2402 shall contain the following information, to the extent relevant:
 - (a) the corporate name of the third party and its legal form;
 - (b) the third party's Legal Entity Identifier (LEI) or, where not available, another identifier required by ~~the applicable national~~ UK law;
 - (c) the third party's legal address as well as the addresses of any of its offices whether within the Union UK or in a third country;
 - (d) the Uniform Resource Locator (URL) of the third party's website;
 - (e) an excerpt from a relevant commercial or court register, or another form of certified evidence, valid at the date of application, confirming the place of incorporation and the scope of business activity of the third party;
 - (f) the articles of incorporation of the third party, or other statutory documentation, stating that the third party is to assess the compliance of securitisations against the criteria provided for in Articles 19 to 22 or Articles 23 to 26 of Regulation (EU) 2017/2402 ('STS compliance');
 - (g) the most recent annual financial statements of the third party, including individual and consolidated financial statements, where available, and where the financial statements of the third party are subject to a statutory audit ~~defined in Article 2(1) of Directive 2006/43/EC of the European Parliament and of the Council as required by UK law~~, the audit report on these financial statements;
 - (h) the name, title, address, email address and the telephone number(s) of the contact person for the purposes of the application;

- (i) ~~the list of Member States in which the third party intends to provide STS compliance services; [deleted]~~
 - (j) the list of types of securitisation for which the third party intends to provide STS compliance services, distinguishing between non ABCP securitisations and ABCP securitisations/programmes;
 - (k) a description of any services, other than providing STS compliance services, that the third party provides or intends to provide;
 - (l) a list of parties to whom the third party provides (or intends to provide) advisory, audit or equivalent services.
2. An application for authorisation shall include the following documentation as attachments:
- (a) a list containing the name and business address of each person or entity that holds 10% or more of the third party's capital or 10% or more of its voting rights, or the holding of which makes it possible to exercise a significant influence over the third party, together with:
 - (i) the percentage of the capital and voting rights held, and, where applicable, a description of the arrangements enabling the person or entity to exercise a significant influence over the third party's management;
 - (ii) the nature of the business activities of the persons and entities referred to in point (a);
 - (b) a list containing the name and business address of any entity in which a person or entity referred to in point (a) holds 20% or more of the capital or voting rights and a description of that entity's activities.
 - (c) a completed copy of the table set out in Annex 1.
3. Where the third party has a parent undertaking, the application referred to in paragraph 1 shall state whether the immediate parent undertaking or ultimate parent undertaking is authorised, registered or subject to supervision, and where this is the case, state any associated reference number and the name of the responsible supervisory authority.
4. Where the third party has subsidiaries or branches, the application for authorisation shall identify the names and business addresses of those subsidiaries or branches and shall describe the areas of business activities of each subsidiary or branch.
5. An application for authorisation shall include a chart showing the ownership links between the third party, its parent undertaking and ultimate parent undertaking, its subsidiaries and affiliates, and any other persons and entities associated with or connected with a network as defined in point 7 of Article 2 of Directive 2006/43/EC as that definition had effect immediately before IP completion day except that the reference in that definition to "a statutory auditor or an audit firm" shall be read as a reference to any person or any other entity, regardless of its legal form, whether established in the UK or in a third country, that is empowered by applicable law to carry out statutory audits of annual financial statements or consolidated financial statements in so far as required under applicable law. The chart shall identify the undertakings by their full name, the LEI or, where not available, another identifier required in accordance with ~~the applicable national~~ UK law, legal form and business address.

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Article 6

Operational safeguards and internal processes to assess STS compliance

1. The application referred to in Article 1 shall include a detailed summary of any policies, procedures and manuals on the controls and operational safeguards established to ensure the independence of the third party's assessment of STS compliance and the integrity of its assessment.
2. The application referred to in Article 1 shall contain any information that demonstrates that the third party has established operational safeguards and internal processes to enable it to properly assess STS compliance, including the following:
 - (a) the number of staff, calculated on a full-time equivalent basis, disaggregated into types of positions within the third party;
 - (b) details on the policies and procedures established by the third party regarding:
 - (i) the independence of individual staff members;
 - (ii) the termination of employment contracts, including any measures to ensure the independence and integrity of the STS assessment process associated with the termination of the employment, including policies and procedures related to negotiating future employment contracts with other undertakings for staff directly involved in the STS assessment;
 - (iii) the qualification requirements for staff directly involved in providing STS compliance activities, distinguished by position type;
 - (iv) training and development policies for staff directly involved in the provision of STS compliance services;
 - (v) the performance evaluation and compensation policies of staff directly involved in STS compliance services;
 - (c) a description of any measures established by the third party to mitigate the risk of over-reliance on any individual staff members for providing STS compliance services;
 - (d) the following information where the third party relies, in any STS assessment, on outsourcing or external experts:
 - (i) details on any policies and procedures with regards to the outsourcing of activities and the engagement of external experts;
 - (ii) a description of any outsourcing arrangements entered into or envisaged by the third party, accompanied by a copy of the contracts governing those outsourcing arrangements;
 - (iii) a description of the services to be provided by the external expert, including the scope of those services and the conditions under which those services should be rendered;
 - (iv) a detailed explanation of how the third party intends to identify, manage and monitor any risks posed by outsourcing and a description of the safeguards put in place to ensure independence of the STS assessment process;

- (e) a description of any measures to be used in the event of a breach of any of the policies or procedures referred to in point (b) of paragraph 2 and point (i) of point (d) of paragraph 2;
 - (f) a description of any policies on the reporting to the ~~competent authority~~ FCA of any material breach of the policies or procedures referred to in point (b) of paragraph 2 and point (i) of point (d) of paragraph 2 or any other fact, event or circumstance which is likely to amount to a breach of the conditions of the authorisation of the third party;
 - (g) a description of any arrangements established to ensure that the relevant persons are aware of the policies and procedures referred to in point (b) of paragraphs 2 and point (i) of point (d) of paragraph 2, and a description of any arrangement relating to the monitoring, review and updating of those policies and procedures.
3. The application referred to in Article 1 shall contain the following for each securitisation type for which the third party intends to provide STS compliance services:
- (a) a description of the STS assessment methodology to be applied, including any procedures and methodology for the quality assurance of that assessment;
 - (b) a template of the STS verification report to be provided to the originator, sponsor or the SSPE.

Article 7

Format of the application

1. A third party shall allocate a unique reference number to each document it submits to the ~~competent authority~~ FCA as part of its application.
2. A third party shall include a substantiated explanation in its application for any requirement of this Regulation considered non-applicable.
3. The application referred to in Article 1 shall be accompanied by a letter signed by a member of the third party's management body confirming that:
 - (a) the submitted information is accurate and complete to the best of his or her knowledge, as of the date of the submission of the application;
 - (b) the applicant is neither a regulated entity as defined in point (4) of Article 2 of Directive 2002/87/EC, nor a credit rating agency as defined in ~~point (b) of~~ Article 3(1) of Regulation (EC) No 1060/2009.

Article 8

Entry into force

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~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

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