

**EXITING THE EUROPEAN UNION: SECURITISATION REPOSITORIES (DEPP
AND EG) INSTRUMENT 2020**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of:
- (1) section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000 (“the Act”);
 - (2) the powers of direction, guidance and related provisions in or under the following provisions of the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendments etc. and Transitional Provision) (EU Exit) Regulations 2018 (SI 2019/335) as applied by Regulation 15 of the Securitisation (Amendment) (EU Exit) Regulations 2019 (SI 2019/660):
 - (a) regulation 69 (Statement of policy);
 - (b) regulation 71 (Powers to issue guidance);
 - (c) regulation 75 (Application of Part 11 of the Act (information gathering and investigations)); and
 - (d) regulation 76 (Application of Part 26 of the Act (notices)).

Commencement

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

Amendments to the Handbook

- C. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- D. The Decision Procedure and Penalties manual (DEPP) is amended in accordance with Annex B to this instrument.

Material outside the Handbook

- E. The Enforcement Guide (EG) is amended in accordance with Annex C to this instrument.

Citation

- F. This instrument may be cited as the Exiting the European Union: Securitisation Repositories (DEPP and EG) Instrument 2020.

By order of the Board
30 September 2020

Annex A

Amendments to the Glossary of definitions

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

*Securitisation
(Amendment) (EU
Exit) Regulations* the Securitisation (Amendment) (EU Exit) Regulations 2019 (SI
2019/660).

Annex B

Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text.

2 Statutory notices and the allocation of decision making

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2.5 Provision for certain categories of decision

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- 2.5.18 G Some of the distinguishing features of notices given under enactments other than the *Act* are as follows:

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- (8) *Securitisation Regulation* (as amended by the *Securitisation (Amendment) (EU Exit) Regulations*): where the *FCA* exercises its powers to refuse an application for registration of a *securitisation repository* under article 12, or to refuse an application made by a *securitisation repository* to withdraw its registration under article 13a, it must give a written notice in accordance with article 13(6). In these circumstances, the decision to give a written notice under article 13(6) will be taken by *FCA* staff under *executive procedures*.

Where the *FCA* exercises its powers to withdraw the registration of a *securitisation repository* on its own initiative under article 13a, it must give a written notice in accordance with article 13(6)(b). In these circumstances, the decision to give a written notice under article 13(6)(b) will be taken by the *RDC*.

Upon receipt of a written notice under regulation 13a, the *securitisation repository* may decide to seek a review or to refer the matter to the *Tribunal*. If the *securitisation repository* decides to seek a review of the decision set out in the regulation 13a notice, they can make representations to the *RDC*. If the *RDC* decides to maintain the original decision, the *securitisation repository* may refer the *RDC's* decision to do so to the *Tribunal*.

2 Annex 1G Warning notices and decision notices under the Act and certain other enactments

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| Trade Repositories (EU Exit) Regulations | Description | Handbook reference | Decision maker |
|-------------------------------------------------|------------------------------------------------------------------------------------------------|---------------------------|-----------------------|
| ... | | | |
| Regulations 65(b) and 66(b) | when the <i>FCA</i> is proposing or deciding to impose a financial penalty under regulation 68 | | <i>RDC</i> |

| <u>Securitisation (Amendment) (EU Exit) Regulations</u> | <u>Description</u> | <u>Handbook reference</u> | <u>Decision maker</u> |
|----------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|------------------------------|
| <u>Regulations 65(a) and 66(a) of the Trade Repositories (EU Exit) Regulations as applied by regulation 15</u> | <u>when the <i>FCA</i> is proposing or deciding to publish a statement under regulation 67 of the Trade Repositories (EU Exit) Regulations as applied by regulation 15</u> | | <u><i>RDC</i></u> |
| <u>Regulations 65(b) and 66(b) of the Trade Repositories (EU Exit) Regulations as applied by regulation 15</u> | <u>when the <i>FCA</i> is proposing or deciding to impose a financial penalty under regulation 68 of the Trade Repositories (EU Exit) Regulations as applied by regulation 15</u> | | <u><i>RDC</i></u> |

2 Annex 2G Supervisory notices

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| Trade Repositories (EU Exit) Regulations | Description | Handbook reference | Decision maker |
|-------------------------------------------------|--------------------|---------------------------|-----------------------|
| | | | |

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|----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|--|-------------------------------------------------------------------------------|
| ... | | | |
| Article 71a(6) and 71a(10) | when the <i>FCA</i> is exercising its power under article 71(3) to refuse an application made by a <i>trade repository</i> to withdraw its registration | | <i>RDC</i> or <i>executive procedures</i> (see <i>DEPP</i> 2.5.18G(7)) |

| <u>Securitisation (Amendment) (EU Exit) Regulations</u> | <u>Description</u> | <u>Handbook reference</u> | <u>Decision maker</u> |
|-----------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|---------------------------------------------------------------------------------------------|
| <u>Article 13(6)(a) and 13(11)(a) of the <i>Securitisation Regulation</i> as amended by regulation 15</u> | <u>when the <i>FCA</i> is exercising its power to refuse an application for registration of a <i>securitisation repository</i> under article 12 of the <i>Securitisation Regulation</i> as amended by regulation 15</u> | | <u><i>RDC</i> or <i>executive procedures</i></u> <u>(see <i>DEPP</i> 2.5.18G(8))</u> |
| <u>Article 13(6)(b) and 13(11)(b) of the <i>Securitisation Regulation</i> as amended by regulation 15</u> | <u>when the <i>FCA</i> is exercising its power to withdraw the registration of a <i>securitisation repository</i> on its own initiative under article 13a(1) or 13a(2) of the <i>Securitisation Regulation</i> as amended by regulation 15</u> | | <u><i>RDC</i></u> <u>(see <i>DEPP</i> 2.5.18G(8))</u> |
| <u>Article 13(6)(c) and 13(11)(c) of the <i>Securitisation Regulation</i> as amended by regulation 15</u> | <u>when the <i>FCA</i> is exercising its power to refuse an application made by a <i>securitisation repository</i> to withdraw its registration under article 13a(3) of the <i>Securitisation Regulation</i> as amended by regulation 15</u> | | <u><i>RDC</i> or <i>executive procedures</i></u> <u>(see <i>DEPP</i> 2.5.18G(8))</u> |

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Sch 4 Powers Exercised

...

Sch
4.2G

The following additional powers and related provisions have been exercised by the *FCA* to make the statements of policy in *DEPP*:

...

Regulation 76 (Application of Part 26 of the Act (notices) of the *Trade Repositories (EU Exit) Regulations*)

Regulation 69 (Statement of policy) of the *Trade Repositories (EU Exit) Regulations*, as applied by regulation 15 of the *Securitisation (Amendment) (EU Exit) Regulations*

Regulation 71 (Powers to issue guidance) of the *Trade Repositories (EU Exit) Regulations*, as applied by regulation 15 of the *Securitisation (Amendment) (EU Exit) Regulations*

Regulation 75 (Application of Part 11 of the Act (information gathering and investigations) of the *Trade Repositories (EU Exit) Regulations*, as applied by regulation 15 of the *Securitisation (Amendment) (EU Exit) Regulations*

Regulation 76 (Application of Part 26 of the Act (notices) of the *Trade Repositories (EU Exit) Regulations*, as applied by regulation 15 of the *Securitisation (Amendment) (EU Exit) Regulations*

Annex C

Amendments to the Enforcement Guide (EG)

Insert the following new section after EG 19.38 (UK Securitisation Regulations). The text is not underlined.

19.38A Securitisation (Amendment) (EU Exit) Regulations 2019

19.38A. 1 Supervisory and enforcement functions in respect of *securitisation repositories* under the *Securitisation Regulation* were transferred from *ESMA* to the *FCA* through the *Securitisation (Amendment) (EU Exit) Regulations* on *IP completion day*. The *Securitisation (Amendment) (EU Exit) Regulations* amend the *Securitisation Regulation* to, amongst other reasons, apply the *Trade Repositories (EU Exit) Regulations*. In places, these regulations in turn apply provisions of the *Act*.

19.38A. 2 The *FCA*'s approach to enforcement under the *Securitisation Regulation* in relation to *securitisation repositories* will mirror our general approach to enforcing the *Act*, as set out in *EG*. We will seek to exercise our enforcement powers in a manner that is transparent, proportionate, responsive to the issue and consistent with our publicly stated policies. We will also seek to ensure fair treatment when exercising our enforcement powers. Finally, we will aim to change the behaviour of the *person* who is the subject of our action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance and, where appropriate, to remedy harm caused by non-compliance.

19.38A. 3 The regulatory powers which the *Securitisation (Amendment) (EU Exit) Regulations* provide to the *FCA* include the power:

- (1) to require information and appoint investigators;
- (2) of entry and inspection;
- (3) to publicly censure;
- (4) to impose financial penalties; and
- (5) to apply for an injunction.

Conduct of investigations under the *Securitisation Regulation* as amended by the *Securitisation (Amendment) (EU Exit) Regulations*

19.38A. 4 The *Securitisation (Amendment) (EU Exit) Regulations* and the *Trade Repositories (EU Exit) Regulations* apply much of Part 11 of the *Act*. The effect of this is to apply the same procedures under the *Act* for appointing investigators and requiring information when investigating breaches of the *Securitisation Regulation*.

19.38A. 5 The *FCA* will notify the subject of the investigation that we have appointed investigators to carry out an investigation under the *Securitisation Regulation*

and the reasons for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The *FCA* expects to carry out a scoping visit early on in the enforcement process in most cases. The *FCA*'s policy in non-criminal investigations under the *Securitisation Regulation* is to use powers to compel the provision of information in the same way as we would during an investigation under the *Act*.

Decision making under the *Securitisation Regulation* as amended by the *Securitisation (Amendment) (EU Exit) Regulations*

19.38A. The decision-making procedures for those decisions under the *Securitisation Regulation* requiring the giving of a *warning notice*, *decision notice* or *supervisory notice* are dealt with in *DEPP*.
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19.38A. The *Securitisation Regulation* requires the *FCA* to give third party rights as set out in section 393 of the *Act*, and to give access to certain material as set out in section 394 of the *Act* as applied by the *Securitisation Regulation* and the *Trade Repositories (EU Exit) Regulations*.
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Imposition of penalties under the *Securitisation Regulation* as amended by the *Securitisation (Amendment) (EU Exit) Regulations*

19.38A. When determining whether to take action to impose a penalty or to issue a public censure under the *Securitisation Regulation*, the *FCA*'s policy includes having regard to the relevant factors in *DEPP* 6.2 and *DEPP* 6.4. The *FCA*'s policy in relation to determining the level of a financial penalty includes having regard, where relevant, to *DEPP* 6.5, *DEPP* 6.5A, *DEPP* 6.5B and *DEPP* 6.5D.
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19.38A. As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving non-criminal breaches of the *Securitisation Regulation* to assist us to exercise our functions under the *Securitisation Regulation* in the most efficient and economical way. See *DEPP* 5, *DEPP* 6.7 and *EG* 5 for further information on the settlement process and the *settlement discount scheme*.
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19.38A. The *FCA* will apply the approach to publicity that is outlined in *EG* 6, read in light of regulation 76 of the *Trade Repositories (EU Exit) Regulations* as applied by article 15 of the *Securitisation Regulation*.
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Statement of policy in section 169(7) interviews (as implemented by the *Securitisation (Amendment) (EU Exit) Regulations*)

19.38A. The *Securitisation (Amendment) (EU Exit) Regulations* amend the *Securitisation Regulation* to apply regulation 75 of the *Trade Repositories (EU Exit) Regulations*, which in turn applies section 169 of the *Act*. This requires the *FCA* to publish a statement of policy on the conduct of certain interviews in response to requests from *overseas regulators*. For the purposes of the *Securitisation Regulation*, the *FCA* will follow the procedures described in *DEPP* 7.
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