

CIRCULAR ON REGULATION (EU) N^o 2017/2402

THE SECURITISATION REGULATION

Implementation of the Securitisation Regulation (the “Regulation”)

This circular is being addressed to all interested stakeholders, in particular to securitisation market participants - including firms considering registering with the European Securities Markets Authority (ESMA) to provide securitisation repository services under the Regulation, securitisation reporting entities being originators, sponsors and Securitisation Special Purpose Entities (SSPEs), investors, potential investors and other users of securitisation data and all entities involved in the ‘Simple, Transparent, and Standardised’ (STS) notification process.

Background

The Authority would like to inform market participants that the [Securitisation Regulation](#) and the related [Capital Requirements Regulation](#) amendments came in force on the 1 January 2019 as part of the European Commission’s Capital Markets Union Action Plan. This aims to strengthen the legislative framework implemented after the financial crisis, in order to address the risks inherent in highly complex, opaque and risky securitisation as well as promote securitisation as a cornerstone of well-functioning financial markets, providing diverse funding, a wider allocation of risk and an opportunity for originators to free up their balance sheets to allow for further lending to the real economy.

The Regulation refers to transaction(s) where credit risk associated with an exposure or pool of exposures is tranching, and where all of the following characteristics are met:

- i. payments in the transaction or scheme are dependent upon the performance of the exposures or of the pool of exposures;
- ii. the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme; and
- iii. the transaction or scheme does not create specialised lending exposures.

Overview of the Securitisation Regulation

The Regulation defines securitisation and establishes due-diligence, risk-retention and transparency requirements for all parties involved in a securitisation transaction; sets out the criteria for credit granting; requirements for selling securitisation to retail clients; requirements for SSPEs as well as conditions and procedures for securitisation repositories. The Regulation also introduces a ban on re-securitisation. Furthermore, it establishes a more risk-sensitive prudential framework for STS transactions.

The Regulation applies to institutional investors; originators; sponsors; original lenders and SSPEs. In terms of the Regulation, an 'Institutional Investor' includes an investor which is one of the following:

- i. an insurance undertaking or a reinsurance undertaking;
- ii. an institution for occupational retirement provision;
- iii. an alternative investment fund manager (AIFM);
- iv. an undertaking for the collective investment in transferable securities (UCITS), if internally managed or otherwise its management company;
- v. a credit institution or an investment firm.

Key criteria under the General Securitisation Framework

Due-Diligence Requirements

The Regulation confers certain due-diligence elements pertaining to the transaction on the institutional investor. These are mainly related to: the credit-granting process of the originator (when the originator is not a credit institution or an investment firm); the compliance of the originator, the sponsor and the original lender with the risk-retention requirements set out in Article 6 of said Regulation; the regular provision of required information by the originator, sponsor or SSPE; and the risk characteristics and structural features in accordance with written procedures.

Risk Retention Requirements

The Regulation also sets out risk-retention requirements with the intention to align the interests of investors with those of the originator, sponsor or original lender. The Regulation states that either the originator, sponsor or original lender shall retain a material net economic interest in the securitisation transaction of at least five per cent on an ongoing basis, which is based on the notional value at origination. The material net economic interest shall not be split amongst different types of retainers and not be subject to any credit-risk mitigation and hedging.

Transparency Requirements

Additionally, the Regulation established Transparency requirements for originators, sponsors and SSPEs. These entities have to provide to holders of a securitisation position, to potential investors and to the Competent Authorities sufficient information on the underlying exposures as well as all the underlying documentation that is essential for understanding the transaction. Originators, Sponsors and SSPEs have to designate who amongst themselves will provide the required information and make this information available via the securitisation repository, which shall act as a single and supervised source of the data necessary for the investor to perform their due diligence.

Key criteria under the specific STS Framework

STS Criteria

The STS Framework aims to establish a more risk sensitive prudential framework for STS securitisation. For a securitisation to be considered as STS, it must satisfy additional stringent requirements pursuant to Chapter 4 of the Securitisation Regulation pertaining to Simplicity, Standardisation and Transparency. The originator, sponsor and SSPEs may, at their discretion, use the service of an authorised third party to verify whether the securitisation is compliant with the STS criteria, however the use of such service shall not under any circumstances affect

the liability of the originator, sponsor or SSPEs in respect of their legal obligations under the Regulation on the due-diligence obligations imposed on the institutional investors.

Documentation

ESMA has published Final Reports containing [technical standards](#) relating to:

- i. The information and format that the originators and sponsors of securitisation products must adhere to when notifying ESMA that a securitisation transaction meets the STS criteria ('STS notification');
- ii. The information to be provided to the competent authorities in the application for the authorisation of a third party assessing the compliance of securitisations with the STS criteria.

Additionally, ESMA has published a Final Report on [technical standards](#) relating to disclosure requirements for securitisation, including a number of disclosure templates as well as an opinion containing revision to the securitisation disclosure Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITS) following a [letter](#) from the European Commission. ESMA has also published the first set of [Questions and Answers](#) relevant to the Regulation. More information about these may be found in the [circular](#) issued on 7 February 2019.

Contacts

Should you have any queries on the above, please do not hesitate to contact Dr Tara Cann Navarro, Senior Analyst, Securities and Markets Supervision (TCannNavarro@mfsa.com.mt) or Mr Luca Caruana, Analyst, Securities and Markets Supervision (LCaruana@mfsa.com.mt) for any further clarifications.

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