

# **Securitisation (Amendment) (EU Exit) Regulations 2019 and Securitisation Regulations 2018 (proposed changes to DEPP and EG)**

**Consultation Paper**

CP19/11\*

March 2019

## How to respond

We are asking for comments on this Consultation Paper (CP) by **8 April 2019**.

You can send them to us using the form on our website at: [www.fca.org.uk/cp19-11-response-form](http://www.fca.org.uk/cp19-11-response-form)

**Or in writing to:**

EMO Law & Policy  
Financial Conduct Authority  
12 Endeavour Square London E20 1JN

**Email:**

[cp19-11@fca.org.uk](mailto:cp19-11@fca.org.uk)

## Contents

<b>1</b>	Summary	3
<b>2</b>	Securitisation Repositories – proposed DEPP and EG changes	5
<b>3</b>	Securitisation Regulations 2018 – proposed DEPP and EG changes	7
<b>Annex 1</b>		
	Questions in this paper	9
<b>Annex 2</b>		
	Cost benefit analysis and equality and diversity	10
<b>Annex 3</b>		
	Compatibility statement	11
<b>Annex 4</b>		
	Abbreviations used in this paper	12
<b>Appendix 1</b>		
	Draft Handbook text	
<b>Appendix 2</b>		
	Draft Handbook text	

# 1 Summary

## Introduction

---

- 1.1** Securitisation Repositories (SRs) in the EU (European Union) are currently regulated under the Securitisation Regulation (EU SR) and supervised by the European Securities and Markets Authority (ESMA). The Treasury intends to make legislation to make the FCA the supervisor responsible for SRs registered under the UK regime.
- 1.2** The Treasury has laid a statutory instrument<sup>1</sup> (the Exit SI) before Parliament that will transfer these responsibilities to us. We will apply our existing supervisory and enforcement processes as necessary to enable us to fulfil these new roles effectively. We base our preparations for the application of the Exit SI, including proposals in this Consultation Paper (CP), on our current understanding of the Treasury's intentions. If the final Exit SI differs from that understanding then we may need to change our approach.
- 1.3** Also, further to our consultation in CP18/30 and following the implementation of the Securitisation Regulations 2018 (2018 Regulations) we have been given additional enforcement powers under these Regulations. Therefore, we propose minor amendments to the Decision Procedure and Penalties Manual (DEPP) and the Enforcement Guide (EG). These amendments are to reflect the further changes made by the 2018 Regulations and describe our enforcement powers and processes for SRs.
- 1.4** Recently, in our consultation in CP19/1 we set out the fees structure we propose to establish for SRs when responsibility for their regulation passes to us from ESMA after the UK leaves the EU on 29 March 2019.

## Summary of proposals

---

- 1.5** We need to amend DEPP and EG because of the changes the Exit SI will introduce.
- 1.6** For enforcement powers over SRs we propose to apply our existing policy and procedures in the exercise of our disciplinary and investigatory powers.
- 1.7** We also propose a decision-making procedure for registering or withdrawing the registration of SRs.
- 1.8** In relation to the 2018 Regulations we propose decision-making procedures for:
- imposing a suspension, condition or limitation on an individual for a breach of a requirement imposed by or under the 2018 Regulations

---

1 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/767074/Draft\\_Securitisation\\_Amendment\\_EU\\_Exit\\_Regs\\_2019\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/767074/Draft_Securitisation_Amendment_EU_Exit_Regs_2019_.pdf) and [https://www.legislation.gov.uk/ukdsi/2018/9780111176214/pdfs/ukdsi\\_9780111176214\\_en.pdf](https://www.legislation.gov.uk/ukdsi/2018/9780111176214/pdfs/ukdsi_9780111176214_en.pdf)

- imposing a suspension, limitation or other restrictions on an authorised person for a breach of a requirement imposed by or under the 2018 Regulations

## Who does this consultation affect?

---

**1.9** These proposals will be of interest to anyone who may be subject to the 2018 Regulations and the Exit SI. This will include (but is not limited to):

- entities which may wish to act as SRs
- firms involved in securitisation markets either as institutional investors or manufacturers (originators, sponsors or securitisation special purpose entities (SSPEs)) of securitisations
- individuals holding offices or positions involving responsibility for taking management decisions at originators, sponsors or SSPEs

## Is this of interest to consumers?

---

**1.10** The proposed changes to DEPP and EG do not directly affect consumers. However, we intend for the proposals in this CP to improve and strengthen the integrity of the securitisation market.

## 2 Securitisation Repositories – proposed DEPP and EG changes

### Introduction

---

- 2.1** In this chapter, we cover the proposals to amend DEPP and EG in light of the Exit SI laid by the Treasury. The Exit SI:
- sets out a procedure for registering, refusing to register, withdrawing the registration of Securitisation Repositories (SRs) and rejecting an application to withdraw the registration of a SR
  - provides new provisions for sanctioning powers over SRs. These are necessary to supervise and enforce compliance with the Exit SI

### Changes to DEPP

---

- 2.2** As noted in chapter 1, we are consulting before the Exit SI is finalised. Once finalised, the cross references to the regulations within that Exit SI, in the draft Handbook instrument may change. We propose changes to DEPP 2 Annexes 1 and 2 to set out decision making procedures for:
- Determining whether registration for a SR is to be refused.
  - Determining whether registration for a SR is to be withdrawn.
  - Determining whether an application from a SR to withdraw its registration should be rejected.
  - Determining when to publish a statement in relation to a contravention of the Exit SI by a SR – the RDC will take the decision to impose a public censure in contested cases. The settlement decision makers will take the decision in settled cases.
  - Determining when to impose a financial penalty on a SR – the RDC will take the decision to impose a financial penalty in contested cases. The settlement decision makers will take the decision in settled cases.

**Q1: Do you have comments on our proposals to change DEPP 2 Annexes 1 and 2?**

### The application of the penalty policy

---

- 2.3** The Exit SI gives us the power to impose a financial penalty on a SR. We propose to apply our existing penalty policy in DEPP 6 as the statement of policy on the use of sanctioning powers for a SR that breaches the Exit SI.
- 2.4** The above approach will be reflected in the changes to Chapter 19 of EG.

**Q2:** Do you have comments on our proposal to apply the existing penalty policy set out in DEPP 6 to SRs?

## Proposed changes to EG

---

**2.5** We propose to set out in Chapter 19 of EG how we will exercise our powers over SRs.

**Q3:** Do you have comments on our proposal to amend EG 19.38A?

## 3 Securitisation Regulations 2018 – proposed DEPP and EG changes

### Introduction

---

- 3.1** In our Policy Statement 18/25 (PS18/25) published on 19 December 2018, we set out amendments to DEPP and EG to reflect powers conferred to us by the Securitisation Regulations 2018 (2018 Regulations) which came into effect on 1 January 2019.
- 3.2** In addition to those powers covered in the annex to PS18/25, the 2018 Regulations also gave the FCA additional powers which were not included in the draft SI on which our Consultation Paper 18/30 and PS18/25 were based.
- 3.3** We are now consulting on our approach to implementing the additional powers conferred on the FCA by the 2018 Regulations.

### Summary of proposals

---

- 3.4** We propose to amend DEPP and EG, in light of the additional powers the 2018 Regulations have given the FCA.
- 3.5** The additional powers include the power to impose a suspension, condition, limitation or other restrictions on persons for a breach of a requirement imposed by or under the 2018 Regulations.

### Changes to DEPP

---

- 3.6** We propose to amend DEPP 2 Annex 1 so that the decision-making procedure for:
- imposing a suspension, condition or limitation on an individual for a breach of a requirement imposed by or under the 2018 Regulations<sup>2</sup> is set out in Annex 1
  - imposing a suspension, limitation or other restrictions on an authorised person for a breach of a requirement imposed by or under the 2018 Regulations<sup>3</sup> is set out in Annex 1

**Q4: Do you have comments on our proposals to change DEPP 2 Annex 1?**

---

<sup>2</sup> See paragraph 1 of Schedule 1 to the 2018 Regulations

<sup>3</sup> See paragraph 4 of Schedule 1 to the 2018 Regulations

## The application of our existing policy to suspensions, conditions, limitations or other restrictions

---

- 3.7** We propose applying our existing policy for suspensions, conditions, limitations or other restrictions as set out in DEPP 6A, when deciding whether to impose a suspension, condition, limitation or other restrictions on an individual or authorised person under the 2018 Regulations. In our view, the factors set out in DEPP 6A are equally appropriate when determining whether to impose a suspension, condition, limitation or other restrictions on an individual or authorised person and its duration.

**Q5:** Do you agree with the above proposals for our policy on how we decide whether to impose a suspension, condition, limitation or other restrictions?

**Q6:** Do you have comments on our proposal to apply the existing sanctioning policies as set out in DEPP 6A?

## Changes to EG

---

- 3.8** We propose to amend Chapter 19.38.4 of EG to add the additional powers listed in paragraph 1.5.

**Q7:** Do you have comments on our proposed amendment to EG 19.38.4?

## Annex 1

### Questions in this paper

- Q1:** Do you have comments on our proposals to change DEPP 2 Annexes 1 and 2?
- Q2:** Do you have comments on our proposal to apply the existing penalty policy set out in DEPP 6 to SRs?
- Q3:** Do you have comments on our proposal to amend EG 19.38A?
- Q4:** Do you have comments on our proposals to change DEPP 2 Annex 1?
- Q5:** Do you agree with the above proposals about our policy on how we decide whether to impose a suspension, condition, limitation or other restrictions?
- Q6:** Do you have comments on our proposal to apply the existing sanctioning policies as set out in DEPP 6A?
- Q7:** Do you have comments on our proposed amendment to EG 19.38.4?

## Annex 2

# Cost benefit analysis and equality and diversity

### Cost benefit analysis

---

1. This CP proposes applying the current sanctioning policy and disciplinary procedures to breaches of the Exit SI and those additional powers given to us in the 2018 Regulations. It also sets out a procedure for registering, refusing to register, withdrawing the registration of a SRs and rejecting an application to withdraw the registration of a SR.
2. Depending on the provisions, either we have no discretion in implementation, or the proposed approach will not substantially differ from our current approach to the exercise of our disciplinary and investigatory powers.
3. Our view is that the costs of the proposals will be of minimal significance if compared with any reasonable counterfactual and that no cost benefit analysis is required. Similarly, we see no implications for our competition objective.

### Equality and diversity

---

4. We are required under the Equality Act 2010 to 'have due regard' to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions.
5. We have considered whether there are any potential equality or diversity impacts of this CP. We believe there are none, but would welcome your comments.

## Annex 3

# Compatibility statement

### Compatibility with the FCA's general duties

---

1. The FCA believes the proposals set out above are compatible with its duties under section 1B of FSMA. The effective and appropriate use of enforcement powers play an important part in pursuing the FCA's statutory objectives, it increases compliance with rules by making market participants more aware of conduct that may breach these rules, and the potential for sanctions for such conduct.
2. We have considered the regulatory principles in section 3B of FSMA. In particular, our proposals are consistent with the need to use resources in the most efficient and economic way, and the principle that regulators should exercise their functions as transparently as possible.
3. We do not expect the proposed changes to have a significantly different impact on mutual societies.
4. Under the Legislative and Regulatory Reform Act 2006 (LRRRA) the FCA is subject to requirements to consider several high-level 'Principles' as we exercise some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). We have considered the principles in the LRRRA and the Regulators' Code for the parts of the proposals that comprise general policies, principles or guidance.

## Annex 4

### Abbreviations used in this paper

<b>CP</b>	Consultation Paper
<b>DEPP</b>	Decision Procedure and Penalties Manual
<b>EG</b>	Enforcement Guide
<b>ESMA</b>	European Securities and Markets Authority
<b>EU</b>	European Union
<b>EU SR</b>	European Union Securitisation Regulation
<b>Exit SI</b>	The Securitisation (Amendment) (EU Exit) Regulations 2019
<b>FCA</b>	Financial Conduct Authority
<b>SI</b>	Statutory Instrument
<b>SRs</b>	Securitisation Repositories
<b>SSPE</b>	Securitisation Special Purposes Entities
<b>RDC</b>	Regulatory Decisions Committee
<b>the Treasury</b>	Her Majesty's Treasury
<b>2018 Regulations</b>	the Securitisation Regulations 2018

We have developed the policy in this Consultation Paper in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

All our publications are available to download from [www.fca.org.uk](http://www.fca.org.uk). If you would like to receive this paper in an alternative format, please call 020 7066 7948 or email: [publications\\_graphics@fca.org.uk](mailto:publications_graphics@fca.org.uk) or write to: Editorial and Digital team, Financial Conduct Authority, 12 Endeavour Square, London E20 1JN

# Appendix 1

## Draft Handbook text

## SECURITISATION REPOSITORIES (DEPP AND EG) INSTRUMENT 2019

### Powers exercised

- A. The Financial Conduct Authority 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/XXXX) as applied by article 15 of the Securitisation (Amendment) (EU Exit) Regulations 2019 (SI 2019/XXXX):
    - (a) regulation 69 (Statement of policy);
    - (b) regulation 71 (Powers to issue guidance);
    - (c) regulation 78 (Application of Part 11 of the Act (information gathering and investigations)); and
    - (d) regulation 79 (Application of Part 26 of the Act (notices)).

### Commencement

- B. This instrument comes into force on *exit day*, immediately after the changes made by the Trade Repositories (Guidance) Instrument 2019 come into force.

### 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 Securitisation Repositories (Guidance) Instrument 2019.

By order of the Board  
[date]

[*Editor's note:* the text in this instrument takes account of the near-final changes proposed in the Credit Rating Agencies (Guidance) Instrument 2019 and the Trade Repositories (Guidance) Instrument 2019 as published in Appendix 1 to PS19/5 'Brexit Policy Statement: Feedback on CP18/28, CP18/29, CP18/34, CP18/36 and CP19/2' (February 2019) as if they were made.]

## **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/XXXX).

## 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

...

### 2.5 Provision for certain categories of decision

...

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

...

- (8) *Securitisation (Amendment) (EU Exit) Regulations*: where the *FCA* is exercising 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* is exercising its powers to withdraw the registration of a Securitisation Repository on the *FCA*'s 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 trade 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

...

<b>Trade Repositories (EU Exit) Regulations</b>	<b>Description</b>	<b>Handbook reference</b>	<b>Decision maker</b>
...			
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>
<b><u>Securitisation (Amendment) (EU Exit) Regulations</u></b>	<b><u>Description</u></b>	<b><u>Handbook reference</u></b>	<b><u>Decision maker</u></b>
<u>Regulations 65(a) and 66(a) of the <i>Trade Repositories (EU Exit) Regulations</i> 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 <i>Trade Repositories (EU Exit) Regulations</i> as applied by Regulation 15</u>		<u><i>RDC</i></u>
<u>Regulations 65(b) and 66(b) of the <i>Trade Repositories (EU Exit) Regulations</i> 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 <i>Trade Repositories (EU Exit) Regulations</i> as applied by Regulation 15</u>		<u><i>RDC</i> or <i>executive procedures</i> (see Note)</u>
<p><u>Note:</u></p> <p><u>The decision to give a <i>warning notice</i> will be taken by <i>FCA</i> staff under <i>executive procedures</i>. If representations are made in response to a <i>warning notice</i> then the <i>RDC</i> will take the decision to give a <i>decision notice</i>. Otherwise the decision to give a <i>decision notice</i> will be taken by <i>FCA</i> staff under <i>executive procedures</i>.</u></p>			

## 2 Annex 2G Supervisory notices

...

<b>Trade Repositories (EU Exit) Regulations</b>	<b>Description</b>	<b>Handbook reference</b>	<b>Decision maker</b>
...			
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))
<b><u>Securitisation (Amendment) (EU Exit) Regulations</u></b>	<b><u>Description</u></b>	<b><u>Handbook reference</u></b>	<b><u>Decision maker</u></b>
<u>Regulation 13(6)(a)</u>	<u>when the <i>FCA</i> is exercising its power under Regulation 12 to refuse an application for registration of a <i>securitisation repository</i></u>		<u><i>RDC</i> or <i>executive procedures</i></u> (see <u><i>DEPP</i> 2.5.18G(8)</u> )
<u>Regulation 13(6)(b)</u>	<u>when the <i>FCA</i> is exercising its power under Regulation 13a to withdraw the registration of a <i>securitisation repository</i> on its own initiative</u>		<u><i>RDC</i></u> (see <u><i>DEPP</i> 2.5.18G(8)</u> )
<u>Regulation 13(6)(c)</u>	<u>when the <i>FCA</i> is exercising its power under Regulation 13a(3) to refuse an application made by a <i>trade repository</i> to withdraw its registration</u>		<u><i>RDC</i> or <i>executive procedures</i></u> (see <u><i>DEPP</i> 2.5.18G(8)</u> )

...

**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 79 (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 78 (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 79 (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. Supervisory and enforcement functions in respect of *securitisation repositories*  
1 under *EU EMIR* were transferred from *ESMA* to the *FCA* through the *Securitisation (Amendment) (EU Exit) Regulations 2019* on *exit day*.

19.38A. The *FCA*'s approach to enforcing under the *Securitisation (Amendment) (EU Exit) Regulations 2019* will mirror our general approach to enforcing the *Act*,  
2 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. The regulatory powers which the *Securitisation (Amendment) (EU Exit) Regulations 2019* provide to the *FCA* include the power:  
3

- (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 (Amendment) (EU Exit) Regulations*

19.38A. The *Securitisation (Amendment) (EU Exit) Regulations 2019* and the *Trade Repositories EU Exit Regulations 2018* apply much of Part 11 of the *Act*. The  
4 effect of this is to apply the same procedures under the *Act* for appointing investigators and requiring information when investigating breaches of the *Securitisation (Amendment) (EU Exit) Regulations*.

19.38A. The *FCA* will notify the subject of the investigation that we have appointed  
5 investigators to carry out an investigation under the *Securitisation (Amendment) (EU Exit) Regulations 2019* 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 (Amendment) (EU Exit) Regulations 2019* 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 (Amendment) (EU Exit) Regulations*

- 19.38A. The decision making procedures for those decisions under the *Securitisation (Amendment) (EU Exit) Regulations 2019* requiring the giving of a *warning notice*, *decision notice* or *supervisory notice* are dealt with within *DEPP*.  
6
- 19.38A. The *Securitisation (Amendment) (EU Exit) Regulations 2019* require 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 (Amendment) (EU Exit) Regulations 2019* and the *Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018*.  
7

#### Imposition of penalties under the *Securitisation (Amendment) (EU Exit) Regulations 2019*

- 19.38A. When determining whether to take action to impose a penalty or to issue a public censure under the *Securitisation (Amendment) (EU Exit) Regulations 2019*, 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.  
8
- 19.38A. As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving non-criminal breaches of the *Securitisation (Amendment) (EU Exit) Regulations 2019* to assist us to exercise our functions under the *Securitisation (Amendment) (EU Exit) Regulations 2019* in the most efficient and economic way. See *DEPP* 5, *DEPP* 6.7 and *EG* 5 for further information on the settlement process and the *settlement discount scheme*.  
9
- 19.38A. The *FCA* will apply the approach to publicity that is outlined in *EG* 6, read in light of regulation 79 of the *Trade Repositories (EU Exit) Regulations* as applied by regulation 15 of the *Securitisation (Amendment) (EU Exit) Regulations 2019*.  
10

#### Statement of policy in section 169(7) interviews (as implemented by regulation 15)

- 19.38A. The *Securitisation (Amendment) (EU Exit) Regulations* apply section 169 of the *Act* which 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 (Amendment) (EU Exit) Regulations*, the *FCA* will follow the procedures described in *DEPP* 7.  
11

# Appendix 2

## Draft Handbook text

**ENFORCEMENT (EU SECURITISATION REGULATION) (No [2]) INSTRUMENT  
2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of and/or under:
- (1) section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000 (“the Act”); and
  - (2) the following provisions in the Financial Services and Markets Act 2000 (Securitisation) Regulations 2018:
    - (a) regulation 9 (Statements of policy); and
    - (b) paragraph 1 of Schedule 1 (Application of sections 66 to 70 of the Act).

**Commencement**

- B. This instrument comes into force on [*date*].

**Amendments to the Handbook**

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

**Material outside the Handbook**

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

**Citation**

- E. This instrument may be cited as the Enforcement (EU Securitisation Regulation) (No [2]) Instrument 2019.

By order of the Board  
[*date*]

## Annex A

## Amendments to the Decision Procedure and Penalties manual (DEPP)

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

## 2 Statutory notices and the allocation of decision making

...

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

...

UK Securitisation Regulations	Description	Handbook reference	Decision maker
...			
Regulation 19(1)(f) and 20(1)(f)	when the <i>FCA</i> is proposing or deciding to refuse a request to cancel the authorisation of a third-party verification service under regulation 17		<i>RDC</i> or <i>executive procedures</i>  (see Note)
Paragraph 1 of Schedule 1	when the <i>FCA</i> is proposing or deciding to take action against an individual by exercising the disciplinary powers conferred by section 66*, <del>to publish a statement or, impose a financial penalty</del> as applied by paragraph 1 of schedule 1		<i>RDC</i>
Paragraph 4 of Schedule 1	when the <i>FCA</i> is proposing or deciding to publish a statement (under section 205), <del>or</del> impose a financial penalty (under section 206), <u>or suspend a permission or impose a restriction in relation to the carrying on of a regulated activity (under section 206A)</u> as applied by paragraph 4 of schedule 1. <u>This applies in respect of an <i>authorised person</i></u>		<i>RDC</i>

	<u>or an unauthorised person to whom section 404C applies.*</u>		
...			

**Annex B****Amendments to the Enforcement Guide (EG)**

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

**19.38 UK Securitisation Regulations**

...

19.38.4 The regulatory powers which the *UK Securitisation Regulations* provide to the *FCA* include the power:

...

- (6) to require restitution; ~~and~~
- (7) to impose temporary prohibitions on individuals holding management functions; and
- (8) to impose a suspension, condition, limitation or other restrictions.

