

Implementation of the EU Securitisation Regulation and the amendment to the Capital Requirements Regulation (including DEPP and EG changes) – Final and near-final rules

Policy Statement

PS18/25

December 2018



This relates to

Consultation Papers 18/22 and 18/30 which are available on our website at www.fca.org.uk/publications

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1 Summary

Introduction

- 1.1** The Securitisation Regulation and related amendment to the Capital Requirements Regulation (CRR Amendment) will come into effect on 1 January 2019. To implement the Securitisation Regulation in the UK, the Treasury has laid an implementing statutory instrument (SI) before Parliament¹. The SI will give us supervisory, disciplinary and investigatory powers over persons subject to the Securitisation Regulation.
- 1.2** This Policy Statement (PS) sets out the final and near-final rules that implement the EU Securitisation Regulation and CRR Amendment. This PS follows our Consultation Papers CP 18/22 (August 2018) and CP 18/30 (October 2018) on proposed changes to our Handbook to ensure it is consistent with the directly applicable EU Securitisation Regulation and CRR Amendment, as well as with the SI.

Who this affects?

- 1.3** The Handbook changes will affect:
- entities which may wish to act as Third Party Verifiers (TPVs)²
 - authorised firms that are involved in securitisation markets either as institutional investors or manufacturers (originator, sponsor and securitisation special purpose entities (SSPEs)) of securitisations
 - unauthorised entities (originators, original lenders or SSPEs) participating in securitisation transactions subject to the Securitisation Regulation
 - individuals holding offices or positions involving responsibility for taking management decisions at firms involved in securitisation markets

Retail consumers may be exposed to securitisations directly or indirectly through their pension funds or investment funds. Our Handbook changes will not have any direct effect on these consumers.

The wider context of this policy statement

- 1.4** The European Commission has passed legislation to make the European securitisation market work more effectively. Securitisation is an important part of the UK's capital markets. We want to ensure that financial market firms and businesses in the real economy have access to an appropriate range of funding tools. We also want to ensure that the requirements on firms to disclose information are appropriate and enable investors to make well-informed decisions.

¹ www.legislation.gov.uk/uksi/2018/1288/made/data.pdf

² In CP 18/22, we referred to TPVs as Third Party Verification Agents.



What we are changing

- 1.5** We consulted in our Consultation Papers (CP 18/22 and CP 18/30) on proposed changes to our Handbook for the authorisation and supervision of TPVs, as well as other changes brought about by the Securitisation Regulation and CRR Amendment.
- 1.6** The legal instrument and draft legal instrument accompanying this PS contain the final and near-final rules. We are making final rules in relation to the Handbook changes which can be found in chapter 3 of the PS. The ability to make these final rules derives directly from existing legal powers.
- 1.7** We are making near-final rules in relation to Fees for TPVs (see chapter 2) and changes to DEPP and EG (see chapter 4). We intend to finalise these rules in January 2019 once the SI is in force. Although they are near-final in most respects, they are subject to the commencement of the SI made by the Treasury.
- 1.8** Further details on these changes are set out below.
- 1.9** **Changes to the Handbook** – We are making changes to a number of parts of our Handbook. These include changes to:
- the Investment Funds sourcebook (FUND) and the Collective Investment Schemes sourcebook (COLL) that cover the obligations of Alternative Investment Fund Managers (AIFMs) and managers of Undertakings for Collective Investment in Transferable Securities (UCITS) investing in securitisations, and
 - parts of the Prudential sourcebook for Investment Firms (IFPRU) to reflect the changes from the Securitisation Regulation and CRR Amendment

Fees for TPVs – We are making near-final rules on new application and periodic fees for authorising TPVs under the Securitisation Regulation.

Changes to DEPP and EG – We are making amendments to certain regulatory guides and regulatory processes in the Handbook. These include changes to the Decision Procedure and Penalties manual (DEPP) and Enforcement Guide (EG) to bring them in line with the changes that the Securitisation Regulation will introduce.

Summary of feedback and our response

- 1.10** We did not receive any formal responses to the Consultation Papers. One prospective applicant to become a TPV gave us informal feedback, supporting our overall approach. We also received a query regarding the scope of our disciplinary powers. As a result, our final and near-final rules are the same as those we consulted on in CP 18/22 and CP 18/30, or contain no significant differences.

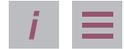
Equality and diversity considerations

- 1.11** We have considered the equality and diversity issues that may arise from this Policy Statement.
- 1.12** We do not consider that the proposals in this Policy Statement negatively affect any of the groups with protected characteristics i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and

gender reassignment. We received no comments from respondents to CP 18/22 or CP 18/30 on our equality impact assessment.

Next steps

- 1.13** Firms who are considering applying for authorisation as a TPV should proceed with their formal application from the coming into effect of the Securitisation Regulation and SI.



2 Fees for Third Party Verifiers (TPVs)

- 2.1** We consulted on a one-off application fee and annual periodic fees. We received no formal feedback to these proposals. The near-final rules are the same as those we consulted on.

Application fees

- 2.2** We will charge a straightforward application fee of £1,500, in line with the proposals in CP 18/22.
- 2.3** Following our Consultation Paper, we allowed firms applying to be TPVs to submit a draft application to us so that we could start to consider them before the final rules. When these rules come into effect, applicants will need to formalise their applications by paying the fee.
- 2.4** We confirm that we will not allow Variation of Permission (VoP) discounts if authorised firms apply to become TPVs. A firm must pay the full fee regardless of any other permissions it holds from us when it applies to be a TPV.

Periodic fees

- 2.5** We will levy a flat-rate annual fee, as proposed in CP 18/22, of £250. We will keep this under review and may consult on raising the fee in the future, depending on the work involved in supervising TPVs.

3 Other changes to the Handbook

- 3.1** We consulted on other changes to various parts of the Handbook. We received no formal feedback to these proposals. The final rules are the same as those we consulted on, except for some minor changes to clarify the text of FUND and COLL.

FUND sourcebook

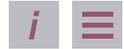
- 3.2** Our Handbook provisions FUND 3.5.4R and 3.5.5R transpose article 17 of the Alternative Investment Fund Managers Directive (AIFMD), as replaced by the Securitisation Regulation. This requires an AIFM to take corrective action when exposed to a securitisation that does not meet the Securitisation Regulation's requirements.
- 3.3** Section 5 of the AIFMD level 2 Regulation will no longer apply from January 2019, subject to transitional provisions for certain securitisations issued during periods before that date. Where transitional provisions do not apply, the Securitisation Regulation's due diligence obligations completely replace section 5 (articles 50 to 56 inclusive) of the AIFMD level 2 Regulation. We have amended the guidance in FUND 3.5.8G to clarify how the transitional provisions preserve the application of provisions of the AIFMD level 2 Regulation for certain eligible securitisations.

COLL sourcebook

- 3.4** Our new Handbook provision COLL 5.2.17AR transposes the amended Article 50a of the UCITS Directive. This provision requires UCITS management companies to take corrective action when they are exposed to a securitisation that does not meet the Securitisation Regulation's requirements.

Prudential sourcebook for investment firms

- 3.5** To reflect the CRR Amendment to the relevant securitisation provisions, our Handbook changes include consequential amendments to the IFPRU guidance on permissions for significant risk transfer under new article 244/245 and the IFPRU TP1 to the table on internal waivers.



4 Changes to DEPP and EG

4.1 We consulted on our proposals to amend DEPP and EG to reflect changes the statutory instrument (SI) will introduce. The near-final rules have been amended to reflect the final SI. We do not think the changes materially affect the substance of our consultation.

Changes to DEPP

4.2 We have made the following amendments to DEPP 2 Annexes 1 and 2 to set out the decision-making procedures for determining:

- **Deciding an application for authorisation as a TPV:** We will use our executive procedures when deciding to give a warning notice proposing to refuse such an application. If we decide to give a decision notice refusing an application, we will do this under the Regulatory Decision Committee (RDC) procedure unless no representations are made in response to the warning notice, in which case the decision to give the decision notice will be taken under our executive procedures.
- **Deciding to temporarily withdraw authorisation of a TPV or vary or revoke such a withdrawal:** We will use our executive procedures.
- **Deciding to cancel the authorisation of a TPV on our own initiative:** We will use the RDC procedure.
- **Deciding an application to cancel the authorisation of a TPV:** We will use our executive procedures when deciding to give a warning notice proposing to refuse such an application. If we decide to give a decision notice refusing an application, we will do this under RDC procedure unless no representations are made in response to the warning notice, in which case the decision to give the decision notice will be taken under our executive procedures.
- **Deciding to impose a temporary ban on making simple transparent and standardised (STS) notifications or to vary or revoke such a ban:** We will use the executive procedures.
- **Deciding to impose a temporary prohibition relating to management functions:** In contested cases, we will use the RDC procedure to decide whether to impose a temporary prohibition.
- **Deciding to publicly censure:** In contested cases, we will use the RDC procedure to decide whether to impose a public censure.
- **Deciding to impose a financial penalty:** In contested cases, we will use the RDC procedure to decide whether to impose a financial penalty.
- **Deciding whether to impose a restitution requirement:** In contested cases, we will use the RDC procedure to take the decision to require a person to pay restitution.

Applying the disciplinary prohibition and penalty policy

- 4.3** We will apply our current policy for disciplinary prohibitions as set out in DEPP 6A, when we decide whether to impose a temporary disciplinary prohibition and how long this prohibition will last. Our view was that the factors set out in DEPP 6A are equally appropriate when deciding whether to impose a temporary disciplinary prohibition and its duration under the SI.
- 4.4** We will also apply our existing penalty policy as the statement of policy on our use of sanctioning powers for authorised and unauthorised entities that breach the SI or the Securitisation Regulation. Accordingly, the relevant decision-makers will apply DEPP 6 as necessary.
- 4.5** We have reflected this approach in the changes to Chapter 19 of EG.

Proposed changes to EG

- 4.6** We have added a new section to Chapter 19 of EG (Non-FSMA powers). This deals with how we will exercise our powers under the SI (EG 19.38). This approach will broadly mirror our approach to conducting investigations, sanctioning and the use of regulatory powers under FSMA.



Annex 1

List of non-confidential respondents

We did not receive any formal responses to the Consultation Papers.

Annex 2

Abbreviations used in this paper

AIFMD	The Alternative Investment Fund Managers Directive (2011/61/EU)
AIFM	Alternative Investment Fund Manager
CBA	Cost Benefit Analysis
CP	Consultation Paper
DEPP	Decision Procedure and Penalties manual
CRR Amendment	The EU Capital Requirement Regulation (575/2013/EU)
EG	Enforcement Guide
ESMA	European Securities Market Authority
FSMA	Financial Services and Markets Act 2000
PS	Policy Statement
RDC	Regulatory Decision Committee
SI	Statutory Instrument
SSPE	Securitisation Special Purpose Entity
STS	Simple, Transparent and Standardised
TPV	Third Party Verifier
UCITS	The Undertakings for Collective Investment in Transferable Securities Directive (2009/65/EC)
VoP	Variation of Permission
Short and long names of Handbook parts mentioned in this paper	
Glossary	Glossary of Definitions
COLL	Collective Investment Schemes sourcebook
FEES	Fees manual
FUND	Investment Funds sourcebook
Prudential/IFPRU	Prudential sourcebook for Investment Firms



Disclaimer

We have developed the policy in this Policy Statement 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.

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Appendix 1

Final rules (legal instrument)

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

...

4.1 Application and purpose

...

Purpose

4.1.2 G This chapter:

...

- (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

...

- 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.

...

Implicit support and significant risk transfer

...

4.12.27 G ...

- (4) If a *firm* fails to comply with article ~~248(4)~~ 250(1) of the *EU CRR*, the *FCA* may require it to disclose publicly that it has provided non-contractual support to the transaction.

...

TP 1 GENPRU and BIPRU waivers: transitional

...

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]
6	Exceptional treatment for	–BIPRU 9.11.10R as modified	Art 263(2) [deleted]

	Permission	Column A FCA Rule (rule waiver or modification)	Column B EU CRR reference
	liquidity facilities where pre-securitisation risk- weighted exposure amount cannot be calculated	in accordance with <i>BIPRU</i> 9.12.28G (Where authorised by the <i>firm's IRB permission</i>)	
...			

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</i> 9.4.11R - <i>BIPRU</i> 9.4.12R (subject to conditions in <i>BIPRU</i> 9.4.15D)	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</i> 9.5.1R(6) and (7) (subject to conditions in <i>BIPRU</i> 9.5.1BD)	Art 244(2), (3), (4) and (5) <u>245(2), (3) and (4)</u>
7	<i>Securitisations</i> of revolving exposures with <i>early</i> <i>amortisation provisions</i> – similar transactions	–<i>BIPRU</i> 9.3.11D –<i>BIPRU</i> 9.13.13R –<i>BIPRU</i> 9.13.14R –<i>BIPRU</i> 9.13.15R –<i>BIPRU</i> 9.13.16R –<i>BIPRU</i> 9.13.17R (subject to conditions in <i>BIPRU</i> 9.13.18G)	Art 256(7) [deleted]
...			

...

Sch 2 Notification and reporting requirements

...

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

...

5.2 General investment powers and limits for UCITS schemes

...

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 (excluding <u>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

...

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*.



Appendix 2

Near-final rules (draft legal instrument)

SECURITISATION REGULATION IMPLEMENTATION (FEES FOR THIRD PARTY VERIFIERS) INSTRUMENT 2019

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); and
 - (b) paragraph 23 (Fees) of Schedule 1ZA (The Financial Conduct Authority); and
 - (2) [paragraph 11 (Penalties and fees) of Schedule 1 and paragraph 4(7) of Schedule 2 of the Securitisation Regulations 2018 (SI 2018/XXXX).]
- 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 [*date*].

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Fees manual (FEES) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Securitisation Regulation Implementation (Fees for Third Party Verifiers) Instrument 2019.

By order of the Board
[*date*]

Annex A

Amendments to the Glossary of definitions

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

third party verifier a person authorised in accordance with paragraph 28(1) of the *Securitisation Regulation*.

[Note: see <https://eur-lex.europa.eu/eli/reg/2017/2402/oj>]

Annex B

Amendments to the Fees manual (FEES)

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

3 Application, Notification and Vetting Fees

...

3.2 Obligation to pay fees

...

3.2.7 R Table of application, notification, vetting and other fees payable to the FCA

Part 1: Application, notification and vetting fees		
(1) Fee payer	(2) Fee payable (£)	Due date
...		
<u>(zze) An application for authorisation as a <i>third party verifier</i></u>	(1) <u>Unless (2) applies, 1,500.</u> (2) <u>Firms which already have <i>Part 4A permissions</i> will not receive a 50% reduction in the authorisation fee.</u>	<u>On the date the application is made.</u>
...		

3 Annex 1R Authorisation fees payable

Part 1 - Authorisation fees payable

...

Part 1(a) Authorisation Fees payable to the FCA by FCA-authorised persons	
Application type	Amount payable (£)
...	
<u>(5) Complexity groupings relating to <i>third party verifiers</i></u>	
<u>(m) <i>Third party verifiers</i></u>	<u>1,500</u>

...

...

4 Periodic fees

...

4 Annex 11R Periodic fees in respect of payment services, electronic money issuance, regulated covered bonds, CBTL business and data reporting services and third party verifiers in relation to the period 1 April ~~2018~~ 2019 to 31 March ~~2019~~ 2020

...

Part 2C – Activity group relevant to <i>data reporting services providers</i>	
...	

Part 2D – Activity group relevant to <i>third party verifiers</i>	
<u>Activity Group</u>	<u>Fee payer falls into this group if:</u>
<u>G.26 TPV</u>	<u>it is a <i>third party verifier</i>.</u>

Part 3

This table indicates the tariff base for each fee-block. The tariff base is the means by which the *FCA* measures the amount of business conducted by *fee-paying payment service providers, fee-paying electronic money issuers, CBTL firms, data reporting services providers* (other than *incoming data reporting services providers*), *firms* registered under the *Money Laundering Regulations* and *issuers of regulated covered bonds and third party verifiers*.

Activity Group	Tariff base
...	
<u>G.26 TPV</u>	<u>Not applicable</u>

Part 4 – Valuation period

This table indicates the valuation date for each fee-block. A *fee-paying payment service provider, a fee-paying electronic money issuer, and a regulated covered bond issuer and a third party verifier* can calculate tariff data by applying the tariff bases set out in Part 3 with reference to the valuation dates shown in this table.

Activity group	Valuation date
...	
<u>G.26 TPV</u>	<u>Not relevant</u>

...

Part 5 – Tariff rates

Activity group	Fee payable in relation to 2018/19
...	
<u>G.26 TPV</u>	<u>250</u>

ENFORCEMENT (EU SECURITISATION REGULATION) INSTRUMENT 2019

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of and/or under:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 139A (Power of the FCA to give guidance)
 - (2) the following provisions in or under the following provisions of the Financial Services and Markets Act 2000 (Securitisation) Regulations 2018:
 - (a) regulation 9 (Statements of policy);
 - (b) paragraph 1 of Schedule 1 (Application of sections 66 to 70 of the Act);
 - (c) paragraph 3 of Schedule 1 (Application of Part 11 of the Act (information gathering and investigations));
 - (d) paragraph 4 of Schedule 1 (Application of part 14 of the Act (disciplinary measures)); and
 - (e) paragraph 7 of Schedule 1 (Application of Part 26 of the Act (notices)).

Commencement

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

Amendments to the Handbook

- C. The Glossary 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 Enforcement (EU Securitisation Regulation) Instrument 2019.

By order of the Board
[*date*]

Annex A

Amendments to the Glossary definitions

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

UK Securitisation Regulations the Financial Services and Markets Act 2000 (Securitisation) Regulations 2018 (SI 2018/1288).

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

...

UK Benchmark Regulations 2018	Description	Handbook reference	Decision maker
...			
<u>UK Securitisation Regulations</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Regulation 19(1)(a) and 20(1)(a)</u>	<u>when the FCA is proposing or deciding to impose a temporary prohibition relating to management functions under regulation 5</u>		<u>RDC</u>
<u>Regulation 19(1)(b) and 20(1)(b)</u>	<u>when the FCA is proposing or deciding to publish a statement under regulation 7</u>		<u>RDC</u>
<u>Regulation 19(1)(c) and 20(1)(c)</u>	<u>when the FCA is proposing or deciding to impose a financial penalty under regulation 8</u>		<u>RDC</u>
<u>Regulation 19(1)(d) and 20(1)(d)</u>	<u>when the FCA is proposing or deciding to refuse an application under regulation 13</u>		<u>RDC or executive procedures (see Note)</u>
<u>Regulation 19(1)(e) and 20(1)(e)</u>	<u>when the FCA is proposing or deciding to cancel the authorisation of a third-party verification service otherwise</u>		<u>RDC</u>

	<u>than at its request under regulation 16</u>		
<u>Regulation 19(1)(f) and 20(1)(f)</u>	<u>when the FCA is proposing or deciding to refuse a request to cancel the authorisation of a third-party verification service under regulation 17</u>		<u>RDC or executive procedures</u> (see Note)
<u>Paragraph 1 of Schedule 1</u>	<u>when the FCA is proposing or deciding to take action against an individual by exercising the disciplinary powers conferred by section 66* to publish a statement or impose a financial penalty as applied by paragraph 1 of schedule 1</u>		<u>RDC</u>
<u>Paragraph 4 of Schedule 1</u>	<u>when the FCA is proposing or deciding to publish a statement (under section 205) or impose a financial penalty (under section 206) as applied by paragraph 4 of schedule 1</u>		<u>RDC</u>
<u>Paragraph 6 of Schedule 1</u>	<u>when the FCA is proposing or deciding to require restitution</u>		<u>RDC</u>
<p>[Note:</p> <p><u>The decision to give a <i>warning notice</i> will be taken by FCA staff under <i>executive procedures</i>. If representations are made in response to a <i>warning notice</i> then the RDC 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 FCA staff under <i>executive procedures</i>.</u></p>			

2 Annex Supervisory notices

2G

...

UK Benchmark Regulations 2018	Description	Handbook reference	Decision maker
Regulation 6(6)	when the FCA is exercising its power under regulation 6(2) to impose, vary or cancel a requirement on its own initiative		<i>Executive procedures</i>

...			
<u>UK Securitisation Regulations</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Regulation 15(3) and (6)</u>	<u>when the FCA is exercising its powers under regulation 14 to temporarily withdraw authorisation, vary the period for which a temporary withdrawal has effect or revoke the temporary withdrawal to provide a third-party verification service</u>		<u>Executive procedures</u>
<u>Regulation 22(3) and (6)</u>	<u>when the FCA is exercising its powers under regulation 21 to impose a temporary ban, vary the period for which a temporary ban has effect or revoke a temporary ban to provide simple, transparent and standardised (STS) notifications</u>		<u>Executive procedures</u>

...

Sch 3 Fees and other required payments

...

3.2G

The FCA's power to impose financial penalties are contained in:
...
the <i>UK Benchmarks Regulations 2018</i>
<u>the UK Securitisation Regulations</u>
...

Sch 4 Powers Exercised

...

4.2G

The following additional powers and related provisions have been exercised by the <i>FCA</i> to make the statements of policy in <i>DEPP</i> :
...
Regulation 23 (Application of Part 26 of the Act (notices)) of the <i>UK Benchmarks Regulations 2018</i>
<u>Regulation 9 (Statements of Policy) of the <i>UK Securitisation Regulations</i></u>
<u>Paragraph 1 of Schedule 1 (Application of sections 66 to 70 of the Act) of the <i>UK Securitisation Regulations</i></u>
<u>Paragraph 3 of Schedule 1 (Application of Part 11 of the Act (information gathering and investigation)) of the <i>UK Securitisation Regulations</i></u>
<u>Paragraph 4 of Schedule 1 (Application of Part 14 of the Act (disciplinary measures)) of the <i>UK Securitisation Regulations</i></u>
<u>Application of Part 26 of the Act (notices) of the <i>UK Securitisation Regulations</i></u>

Annex C

Amendments to the Enforcement Guide (EG)

Insert the following new section after EG 19.37 (UK Benchmarks Regulations 2018). The text is not underlined.

19.38 UK Securitisation Regulations

- 19.38.1 The *UK Securitisation Regulations* implement the *Securitisation Regulation*. The *FCA* has investigative and enforcement powers in relation to both criminal and non-criminal breaches of the *UK Securitisation Regulations*, *Securitisation Regulation* and any directly applicable EU regulation made under the *Securitisation Regulation*.
- 19.38.2 The *Securitisation Regulation* and the *UK Securitisation Regulations* seek to make the securitisation market work more effectively. They aim to address some of the harms to investors identified in these markets following the financial crisis, including the lack of adequate disclosure, and the misalignment between issuers' and investors' interests. The new framework consolidates existing requirements and strengthens the legislation on securitisation. The *Securitisation Regulation* and the *UK Securitisation Regulations* promote transparency and appropriate due diligence by investors for securitisation investments. They create a framework for simple, transparent and standardised (STS) securitisations. This framework will help to reduce the harm from investors making badly-informed decisions because they fail to understand and appropriately analyse the risks in their securitisation investments.
- 19.38.3 The *FCA's* approach to enforcement under the *UK Securitisation Regulations*, whether the person is authorised or not, will mirror our general approach to enforcing the *Act*, as set out in *EG 2*. 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 in order to:
- (1) deter future non-compliance by others;
 - (2) eliminate any financial gain or benefit from non-compliance; and
 - (3) remedy the harm caused by the non-compliance.
- 19.38.4 The regulatory powers which the *UK Securitisation 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;
- (5) to apply for an injunction or restitution order;
- (6) to require restitution; and
- (7) to impose temporary prohibitions on individuals holding management functions.

19.38.5 In addition, the *UK Securitisation Regulations* provide the power for the *FCA* to take criminal or non-criminal action for misleading the *FCA*.

19.38.6 The *UK Securitisation Regulations*, for the most part, mirror the *FCA*'s investigative, sanctioning and regulatory powers under the *Act*. The *FCA* has decided to adopt procedures and policies in relation to the use of those powers akin to those we have under the *Act*. Key features of the *FCA*'s approach are described below.

The conduct of investigations under the UK Securitisation Regulations

19.38.7 The *UK Securitisation 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* and the *UK Securitisation Regulations*.

19.38.8 The *FCA* will notify the subject of the investigation that we have appointed investigators to carry out an investigation under the *UK Securitisation Regulations* 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 *UK Securitisation Regulations* is to use powers to compel the provision of information in the same way as we would in the course of an investigation under the *Act*.

Decision making under the UK Securitisation Regulations

19.38.9 The decision-making procedures for those decisions under the *UK Securitisation Regulations* requiring the giving of a *warning notice*, *decision notice* or a *supervisory notice* are dealt with in *DEPP*.

19.38.10 The *UK Securitisation Regulations* do not require the *FCA* to have published procedures for commencing criminal prosecutions. However, in these situations the *FCA* expects that we will normally follow our decision-making procedures for the equivalent decisions under the *Act*, as set out in *EG 12*.

- 19.38.11 The *UK Securitisation Regulations* do not require the *FCA* to have published procedures to apply to the court for an injunction or restitution order. However, the *FCA* will normally follow our decision-making procedures for the equivalent decisions under the *Act*, as set out in *EG 10* and *EG 11*.
- 19.38.12 The *UK Securitisation Regulations* 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 *UK Securitisation Regulations*.
- 19.38.13 Certain *FCA* decisions may be referred to the Tribunal by an aggrieved party.

Imposition of penalties under the UK Securitisation Regulations

- 19.38.14 When determining whether to take action to impose a penalty or to issue a public censure under the *UK Securitisation Regulations* 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* to *DEPP 6.5B* and *DEPP 6.5D*.
- 19.38.15 As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving non-criminal breaches of the *UK Securitisation Regulations* to assist us to exercise our functions under the *UK Securitisation Regulations* 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*.

Imposition of disciplinary prohibitions under the UK Securitisation Regulations

- 19.38.16 The *FCA* may impose under the *UK Securitisation Regulations* a temporary prohibition in respect of an individual holding an office or position involving responsibility for taking decisions about the management of an *originator*, *sponsor* or *SSPE*. When determining whether to impose a temporary prohibition and what the length of any temporary prohibition would be the *FCA* will have regard to the factors set out in *DEPP 6A*.

Statement of policy in section 169(7) (as implemented by the UK Securitisation Regulations)

- 19.38.17 The *UK Securitisation 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 request from overseas regulators. For the purposes of the *UK Securitisation Regulations* the *FCA* will follow the procedures described in *DEPP 7*.

