Draft Regulations laid before Parliament under sections 71S(2) and 429(2) of the Financial Services and Markets Act 2000 and section 4(9) of the Financial Services and Markets Act 2023, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2023 No.

FINANCIAL SERVICES AND MARKETS

The Securitisation Regulations 2023

Made - - - -	***
Coming into force - -	***

The Treasury make the following Regulations in exercise of the powers conferred by [sections 3RE, 71K, 71N, 138EA and 428(3) of the Financial Services and Markets Act 2000 and sections 4, 70(2) and 72(5) and (6) of the Financial Services and Markets Act 2023].

In accordance with sections 71S(2) and 429(2) of the Financial Services and Markets Act 2000 and section 4(9) of the Financial Services and Markets Act 2023, a draft of these Regulations has been laid before, and approved by a resolution of, each House of Parliament.

PART 1

Introductory

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Securitisation Regulations 2023 and come into force on…….2023.

(2) These Regulations extend to England and Wales, Scotland and Northern Ireland.

Interpretation

2.—(1) In these Regulations—

“ABCP programme” means a programme of securitisations the securities issued by which predominantly take the form of asset-backed commercial paper with an original maturity of one year or less;

“ABCP transaction” means a securitisation within an ABCP programme;

“Article 7 instruments” means Commission Delegated Regulation (EU) 2020/1224 of 16 October 2019 supplementing Regulation (EU) 2017/2402 with regard to regulatory technical standards specifying the information and the details of a securitisation to be made available by the originator, sponsor and securitisation special purpose entity and Commission Implementing Regulation (EU) 2020/1225 of 29 October 2019 laying down implementing technical standards with regard to the format and standardised templates for making available

the information and details of a securitisation by the originator, sponsor and securitisation special purpose entity (as those Regulations form part of retained EU law);

"capital requirements regulation" means Regulation 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms;

"CRAR" means Regulation No 1060/2009 of 16 September 2009 on credit rating agencies;

"credit institution" has the meaning given in Article 4(1)(1) of the capital requirements regulation;

"EMIR" means Regulation (EU) No 648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;

"fully-supported ABCP transaction" has the meaning given in regulation 7;

"investment firm" has the meaning given in Article 4(1)(2) of the capital requirements regulation;

"investor" means a person holding a securitisation position;

"occupational pension scheme" has the meaning given in section 1(1) of the Pension Schemes Act 1993 that has its main administration in the United Kingdom;

"original lender" means an entity which, itself or through related entities, directly or indirectly, concluded the original agreement which created the obligations or potential obligations of the debtor or potential debtor giving rise to the exposures being securitised;

"originator" means an entity which—

(a) itself or through related entities, directly or indirectly, was involved in the original agreement which created the obligations or potential obligations of the debtor or potential debtor giving rise to the exposures being securitised; or

(b) purchases a third party's exposures on its own account and then securitises them;

"PRA-authorised person" has the meaning given in section 2B(5) of FSMA 2000;

"rule" means a rule made by the FCA or the PRA under FSMA 2000;

"securitisation" means a transaction or scheme, whereby the credit risk associated with an exposure or a pool of exposures is tranched, having all of the following characteristics—

(a) payments in the transaction or scheme are dependent upon the performance of the exposure or of the pool of exposures;

(b) the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme; and

(c) the transaction or scheme does not create exposures which possess all of the following characteristics—

  (i) the exposure is to an entity which was created specifically to finance or operate physical assets or is an economically comparable exposure;

  (ii) the contractual arrangements give the lender a substantial degree of control over the assets and the income that they generate;

  (iii) the primary source of repayment of the obligation is the income generated by the assets being financed, rather than the independent capacity of a broader commercial enterprise;

"securitisation position" means an exposure to a securitisation;

"securitisation repository" means a legal person that centrally collects and maintains the records of securitisations;

"sponsor" means a credit institution or an investment firm as defined in paragraph 1A of Article 2 of Regulation 600/2014/EU, whether located in the United Kingdom or in a country or territory outside the United Kingdom, which—

(a) is not an originator; and

(b) either—

DRAFT

(i) establishes and manages an ABCP programme or other securitisation that purchases exposures from third party entities; or

(ii) establishes an ABCP programme or other securitisation that purchases exposures from third party entities and delegates the day-to-day active portfolio management involved in that securitisation to an entity which is authorised to manage assets belonging to another person in accordance with the law of the country in which the entity is established;

"securitisation special purpose entity" means a corporation, trust or other entity, other than an originator or sponsor, established for the purpose of carrying out one or more securitisations, the activities of which are limited to those appropriate to accomplishing that objective, the structure of which is intended to isolate the obligations of the securitisation special purpose entity from those of the originator;

"STS" has the meaning given in regulation 23;

"STS criteria" has the meaning given in regulation 23;

"STS equivalent non-UK securitisation" means a securitisation of a description in relation to which a country or territory outside the United Kingdom is designated by regulations under regulation 6;

"STS notification" has the meaning given in regulation 23;

"STS securitisation" has the meaning given in regulation 23;

"territory" includes the European Union and any other international organisation or authority comprising countries or territories;

"third party verifier" has the meaning given in regulation 26;

"tranche" means a contractually established segment of the credit risk associated with an exposure or a pool of exposures, where a position in the segment entails a risk of credit loss greater than or less than a position of the same amount in another segment, without taking account of credit protection provided by third parties directly to the holders of positions in the segment or in other segments;

"the Tribunal" means the Upper Tribunal.

(2) In these Regulations, references to rules made by the FCA or the PRA are to those rules as they have effect from time to time.

DRAFT

PART 2

Regulators: general

Risk evaluation and monitoring duties

3.—(1) [The appropriate regulator must require that risks arising from securitisation transactions, including reputational risks, are evaluated and addressed through appropriate policies and procedures of originators, sponsors, securitisation special purpose entities and original lenders located in the United Kingdom.]

(2) [The appropriate regulator must monitor, as applicable, the specific effects that the participation in the securitisation market has on the stability of a financial institution as part of its prudential supervision in the field of securitisation, taking into account, without prejudice to stricter sectoral regulation—

(a) the size of capital buffers;

(b) the size of the liquidity buffers; and

(c) the liquidity risk for investors due to a maturity mismatch between its funding and investments.]

(3) [Where an appropriate regulator identifies a material risk to the financial stability of a financial institution or to the financial system as a whole, it must take action to mitigate those risks and, unless it is the PRA, report its findings to the Bank of England.]

(4) [In this regulation—

"appropriate regulator"—

(a) in paragraph (1) means—

(i) in relation to a PRA-authorised person, the PRA;

(ii) in relation to any originator, sponsor, securitisation special purpose entity or original lender which is not a PRA-authorised person, the FCA;

(b) in paragraphs (2) and (3) means—

(i) in relation to a financial institution which is a PRA-authorised person, the PRA;

(ii) in relation to a financial institution which is not a PRA-authorised persons, the FCA;

["authorised person" has the meaning given in section 31(2) of FSMA 2000;]

"financial institution" means an original lender, originator, sponsor or investor which is—

(a) a PRA-authorised person,

(b) an FCA investment firm (as defined in section 143A of FSMA 2000);

(c) [any other financial institution as defined in Article 4(1)(26) of the capital requirements regulation which is an authorised person and……].]

Requirement for the FCA and PRA to consult in relation to re-securitisation

4.—(1) Before granting permission to an investment firm or a credit institution to include a securitisation position as an underlying exposure in a securitisation, the appropriate regulator must consult the Bank of England.

(2) Such consultation must last no longer than 60 days from the date on which the appropriate regulator notifies the Bank of England of the need for consultation.

(3) In this regulation, "appropriate regulator" means—

(a) in relation to an investment firm or credit institution which is a PRA-authorised person, the PRA;

(b) in relation to any other investment firm, the FCA.

PART 3

Restrictions on establishment of a securitisation special purpose entity

Restrictions on establishment of a securitisation special purpose entity

5. A securitisation special purpose entity must not be established in a country or territory outside the United Kingdom to which any of the following applies—

(a) the country or territory is listed as a high-risk and non-cooperative jurisdiction by the Financial Action Task Force;

(b) the country or territory has not signed an agreement with the United Kingdom to ensure that that country or territory fully complies with the standards provided for in Article 26 of the Organisation for Economic Cooperation and Development ("OECD") Model Tax Convention on Income and on Capital or in the OECD Model Agreement on the Exchange of Information on Tax Matters, and ensures an effective exchange of information on tax matters, including any multilateral tax agreements.

DRAFT

PART 4

Designation of Countries and Territories outside the United Kingdom

Designation of country or territory in relation to securitisations

6.—(1) The Treasury may by regulations designate a country or territory in relation to securitisations of descriptions specified in the regulations.

(2) The power in paragraph (1) is exercisable only if the Treasury are satisfied that the law and practice which applies in the country or territory, in relation to securitisations of the descriptions specified, has equivalent effect (taken as a whole) [to the law of the United Kingdom applicable to STS securitisations].

(3) In making regulations under paragraph (1), the Treasury must have regard, in addition to any other matters they consider relevant, to whether the FCA (and, where relevant, the PRA) have established effective cooperation arrangements with the competent authorities of the country or territory.

(4) When considering whether to make, vary or revoke regulations under paragraph (1), the Treasury may, by making a request in writing to the FCA, require the FCA to prepare a report on the law and practice of a country or territory outside the United Kingdom, or particular aspects of such law and practice, in relation to securitisations of descriptions specified in the request.

(5) If the Treasury request a report under paragraph (4), the FCA must—

(a) consult the PRA when preparing the report, and

(b) provide the Treasury with the report within such reasonable period as may be specified in the request (or such other period as may be agreed with the Treasury).

(6) Regulations under paragraph (1) may—

(a) specify matters that a person carrying out a due-diligence assessment required by regulations 8 and 9 must consider with regard to an STS equivalent non-UK securitisation;

(b) in relation to a matter specified, specify the extent to which the person may rely on the matter.

(7) Regulations under this regulation are to be made by statutory instrument.

(8) Such regulations may—

(a) contain incidental, supplemental, consequential and transitional provision; and

(b) make different provision for different purposes.

(9) Regulations under this regulation are subject to annulment in pursuance of a resolution of either House of Parliament.

PART 5

Due diligence requirements

CHAPTER 1

Occupational pension schemes' due-diligence requirements

Interpretation of Part 5

7. In this Part—

"fully-supported ABCP programme" means an ABCP programme that its sponsor directly and fully supports by providing to the securitisation special purpose entity one or more liquidity facilities covering at least all of the following—

(a) all liquidity and credit risks of the ABCP programme;

(b) any material dilution risks of the exposures being securitised;

(c) any other ABCP transaction-level and ABCP programme-level costs if necessary to guarantee to the investor the full payment of any amount under the ABCP;

"fully-supported ABCP transaction" means an ABCP transaction supported by a liquidity facility, at transaction level or at ABCP programme level, that covers at least all of the following—

(a) all liquidity and credit risks of the ABCP transaction;

(b) any material dilution risks of the exposures being securitised in the ABCP transaction;

(c) any other ABCP transaction-level and ABCP programme-level costs if necessary to guarantee to the investor the full payment of any amount under the ABCP;

"institutional investor" means an investor which is one of the following—

(a) an insurance undertaking as defined in section 417(1) of FSMA 2000;

(b) a reinsurance undertaking as defined in section 417(1) of FSMA 2000;

(c) an occupational pension scheme;

(d) a fund manager of an occupational pension scheme appointed under section 34(2) of the Pensions Act 1995 that, in respect of activity undertaken pursuant to that appointment, is authorised for the purposes of section 31 of FSMA 2000;

(e) [an AIFM (as defined in regulation 4(1) of the Alternative Investment Fund Managers Regulations 2013) which markets or manages AIFs (as defined in regulation 3 of those Regulations) in the United Kingdom];

(f) a management company as defined in section 237(2) of FSMA 2000;

(g) a UCITS as defined in section 236A of FSMA 2000, which is an authorised open ended investment company as defined in section 237(3) of FSMA 2000;

(h) a CRR firm as defined in Article 4(1)(2A) of the capital requirements regulation;

(i) an FCA investment firm as defined in Article 4(1)(2AB) of the capital requirements regulation;

"liquidity facility" means the securitisation position arising from a contractual agreement to provide funding to ensure timeliness of cash flows to investors.

Due-diligence requirements for occupational pension schemes: prior to holding a securitisation position

8.—(1) Prior to holding a securitisation position, an occupational pension scheme which is not the originator, sponsor or original lender must verify the following matters—

(a) where the originator or original lender established in the United Kingdom is not a credit institution or an investment firm, the originator or original lender grants all the credits giving rise to the underlying exposures on the basis of sound and well-defined criteria and clearly established processes for approving, amending, renewing and financing those credits and has effective systems in place to apply those criteria and processes in accordance with FCA and PRA rules [relating to credit-granting] [*references to the rules replacing Article 9(1) of the Securitisation Regulation made by the FCA and PRA will be included in the finalised text*];

(b) where the originator or original lender is established in a country or territory outside the United Kingdom, the originator or original lender grants all the credits giving rise to the underlying exposures on the basis of sound and well-defined criteria and clearly established processes for approving, amending, renewing and financing those credits and has effective systems in place to apply those criteria and processes to ensure that credit-granting is based on a thorough assessment of the debtor's creditworthiness;

(c) if established in the United Kingdom, the originator, sponsor or original lender retains on an ongoing basis a material net economic interest in accordance with FCA and PRA rules [specifying risk retention requirements] [*references to the rules replacing Article 6 of the*

Securitisation Regulation made by the FCA and PRA will be included in the finalised text] and the risk retention is disclosed to the institutional investor in accordance with FCA and PRA rules [specifying transparency requirements] [*references to the rules replacing Article 7 of the Securitisation Regulation made by the FCA and PRA will be included in the finalised text*] and the Article 7 instruments;

(d) if established in a country or territory outside the United Kingdom, the originator, sponsor or original lender retains on an ongoing basis a material net economic interest which, in any event, must not be less than 5%, determined in accordance with FCA and PRA rules [specifying risk retention requirements] [*references to the rules replacing Article 6 of the Securitisation Regulation made by the FCA and PRA will be included in the finalised text*], and discloses the risk retention to institutional investors;

(e) if established in the United Kingdom, the originator, sponsor or securitisation special purpose entity has, where applicable, made available the information required by FCA and PRA rules [specifying transparency requirements] [*references to the rules replacing Article 7 of the Securitisation Regulation made by the FCA and PRA will be included in the finalised text*] and the Article 7 instruments in accordance with the frequency and modalities provided for in those rules and instruments;

(f) if established in a country or territory outside the United Kingdom, the originator, sponsor or securitisation special purpose entity has, where applicable—

(i) made available information which is substantially the same as that which it would have made available in accordance with sub-paragraph (e) if it had been established in the United Kingdom; and

(ii) has done so with such frequency and modalities as are substantially the same as those with which it would have made information available in accordance with sub-paragraph (e) if it had been so established.

(2) Prior to holding a securitisation position, an occupational pension scheme which is not the originator, sponsor or original lender must carry out a due-diligence assessment which enables it to assess the risks involved and consider at least all of the following—

(a) the risk characteristics of the individual securitisation position and of the underlying exposures;

(b) all the structural features of the securitisation that can materially impact the performance of the securitisation position, including the contractual priorities of payment and priority of payment-related triggers, credit enhancements, liquidity enhancements, market value triggers, and transaction-specific definitions of default;

(c) where an STS notification has been made in respect of a securitisation, the securitisation's compliance with the relevant STS criteria, the requirements of regulation 25 (STS notification requirements) and the requirements of FCA rules [relating to STS notification requirements] [*references to the rules made by the FCA will be included in the finalised text*];

(d) with regard to an STS equivalent non-UK securitisation, such matters as may be specified in regulations made under regulation 6 (and may rely on such matters to such extent as may be specified).

(3) Notwithstanding paragraph (2)(a) and (b), in the case of a fully-supported ABCP programme, an occupational pension scheme investing in the commercial paper issued by that ABCP programme must consider the features of the ABCP programme and the full liquidity support.

(4) For the purposes of paragraph (2)(c), an occupational pension scheme may rely to an appropriate extent on the STS notification and on the information disclosed by the originator, sponsor and securitisation special purpose entity on the compliance with the relevant STS criteria, without solely or mechanistically relying on that notification or information.

[*note:* Article 5(2) of the Securitisation Regulation is not replaced in this draft SI but consideration will be given to providing for an equivalent derogation. Article 5(3)(d) of the

DRAFT

Securitisation Regulation is not replaced in this draft SI but the policy is that it is to continue in force until 31st December 2024]

Due-diligence requirements for occupational pension schemes: ongoing requirements

9. An occupational pension scheme which is not the originator, sponsor or original lender holding a securitisation position must at least—

(a) establish appropriate written procedures that are proportionate to the risk profile of the securitisation position and, where relevant, to the institutional investor's trading and non-trading book, in order to monitor, on an ongoing basis, compliance with regulation 8 and the performance of the securitisation position and of the underlying exposures, and—

(i) where relevant with respect to the securitisation and the underlying exposures, those written procedures must include—

(aa) monitoring of the exposure type,

(bb) the percentage of loans more than 30, 60 and 90 days past due,

(cc) default rates,

(dd) prepayment rates,

(ee) loans in foreclosure,

(ff) recovery rates,

(gg) repurchases,

(hh) loan modifications,

(ii) payment holidays,

(jj) collateral type and occupancy, and

(kk) frequency distribution of credit scores or other measures of credit worthiness across underlying exposures, industry and geographical diversification, frequency distribution of loan to value ratios with band widths that facilitate adequate sensitivity analysis;

(ii) where the underlying exposures are themselves securitisation positions, as permitted under FCA and PRA rules [concerning re-securitisation] [*references to the rules replacing Article 8 of the Securitisation Regulation made by the FCA and PRA will be included in the finalised text*], institutional investors must also monitor the exposures underlying those positions;

(b) in the case of a securitisation other than a fully-supported ABCP programme, regularly perform stress tests on the cash flows and collateral values supporting the underlying exposures or, in the absence of sufficient data on cash flows and collateral values, stress tests on loss assumptions, having regard to the nature, scale and complexity of the risk of the securitisation position;

(c) in the case of a fully-supported ABCP programme, regularly perform stress tests on the solvency and liquidity of the sponsor;

(d) ensure internal reporting to its management body so that the management body is aware of the material risks arising from the securitisation position and so that those risks are adequately managed;

(e) be able to demonstrate to the Pensions Regulator, upon request, that it has a comprehensive and thorough understanding of the securitisation position and its underlying exposures and that it has implemented written policies and procedures for the risk management of the securitisation position and for maintaining records of the verifications and due diligence in accordance with regulation 8 and of any other relevant information; and

(f) in the case of exposures to a fully-supported ABCP programme, be able to demonstrate to the Pensions Regulator, upon request, that it has a comprehensive and thorough

DRAFT

understanding of the credit quality of the sponsor and of the terms of the liquidity facility provided.

Due-diligence requirements for occupational pension schemes: delegation of investment management decisions

10. Where an occupational pension scheme [which is not the originator, sponsor or original lender] has given another institutional investor authority to make investment management decisions that might expose the occupational pension scheme to a securitisation—

(a) the occupational pension scheme may instruct that managing party to fulfil the occupational pension scheme's obligations under regulations 8 and 9 in respect of any exposure to a securitisation arising from those decisions; and

(b) [where an institutional investor is instructed under this regulation to fulfil the obligations of an occupational pension scheme and fails to do so, any sanction imposed as a result of the failure may be imposed on the managing party and not on the occupational pension scheme which is exposed to the securitisation].

CHAPTER 2

Other institutional investors' due diligence requirements

Rules in relation to other institutional investors' due diligence requirements

11.—(1) [The appropriate regulator must make general rules requiring a relevant institutional investor to carry out due-diligence—

(a) before holding a securitisation position, and

(b) while holding a securitisation position.]

(2) In this regulation—

["appropriate regulator"—

(a) in relation to a relevant institutional investor which is a PRA-authorised person, means the PRA;

(b) in relation to other relevant institutional investors, means the FCA.]

"general rules"—

(a) in relation to the FCA, has the meaning given in section 137A(2) of FSMA 2000;

(b) in relation to the PRA, has the meaning given in section 137G(2) of FSMA 2000;

["relevant institutional investor" means an institutional investor which is an authorised person and which is not—

(a) an occupational pension scheme, or

(b) the originator, sponsor or original lender in that securitisation.]

PART 6

Securitisation repositories

CHAPTER 1

Use of a securitisation repository

Use of a securitisation repository

12. [The originator, sponsor or securitisation special purpose entity [nominated] for this purpose must make the information for a securitisation transaction referred to in FCA and PRA rules [specifying transparency requirements] [*references to the rules replacing Article 7 of the Securitisation Regulation made by the FCA and PRA will be included in the finalised text*] [and

the Article 7 instruments] available by means of a securitisation repository registered with the FCA under regulation 13.]

[*Note*: we intend to maintain the exemption for certain [private] securitisations not to be required to report to securitisation repositories. In addition we are considering the interaction between the current exemption in Article 7(2) sub-paragraph 3 of the Securitisation Regulation and the amendments to section 85 of FSMA being proposed in the illustrative SI entitled the “Financial Services and Markets Act 2000 (Public Offers and Admissions to Trading) Regulations 2023”.]

CHAPTER 2

Registration of a securitisation repository

Registration of a securitisation repository

13.—(1) A securitisation repository must register with the FCA for the purposes of regulation 12 and FCA and PRA rules [specifying transparency requirements] [*references to the rules replacing Article 7 of the Securitisation Regulation made by the FCA and PRA will be included in the finalised text*] under the conditions and the procedure set out in this Chapter.

(2) To be eligible to be registered under this regulation, a securitisation repository must—

(a) be a body corporate established in the United Kingdom,

(b) apply procedures to verify the completeness and consistency of the information made available to it under FCA and PRA rules [specifying transparency requirements] and the Article 7 instruments, and

(c) meet the requirements provided for in Articles 78, 79 and 80(1) to (3), (5) and (6) of EMIR.

(3) For the purposes of this regulation, references in Articles 78 and 80 of EMIR to Article 9 of EMIR must be construed as references to regulation 12, FCA and PRA rules [specifying transparency requirements] and the Article 7 instruments.

Application for registration

14.—(1) A securitisation repository must submit to the FCA—

(a) an application for registration; or

(b) an application for an extension of registration for the purposes of regulation 12 and FCA and PRA rules [specifying transparency requirements] [*references to the rules replacing Article 7 of the Securitisation Regulation made by the FCA and PRA will be included in the finalised text*] in the case of a trade repository already registered under Chapter 1 of Title VI of EMIR or under Chapter III of Regulation (EU) 2015/2365 of 25 November 2015 on transparency of securities financing transactions and of reuse.

(2) For the purposes of this Chapter, FCA and PRA rules [specifying transparency requirements] [and the Article 7 instruments], Articles 78, 79 and 80 of EMIR have effect in relation to a securitisation repository as they have effect in relation to a trade repository, but with the following modifications—

(a) a reference to a trade repository is a reference to a securitisation repository; and

(b) a reference to EMIR is a reference to this Chapter.

(3) The FCA must assess whether the application is complete within 20 working days of receipt of the application.

(4) Where the application is not complete, the FCA must set a deadline by which the securitisation repository is to provide additional information.

DRAFT

(5) After having assessed an application as complete, the FCA must notify the securitisation repository accordingly.

Examination of the application

15. The FCA must, within 40 working days of making the notification referred to in regulation 14(5)—

(a) examine the application for registration, or for an extension of registration, based on the compliance of the securitisation repository with this Chapter and FCA rules [relating to registration of a securitisation repository] [*references to the rules made by the FCA will be included in the finalised text*],

(b) make a decision accepting or refusing registration or an extension of registration, and

(c) give reasons for its decision.

Publication of decision

16. The FCA must publish on its website a list of securitisation repositories registered in accordance with this Chapter (referred to in this Chapter as "the Register").

Notification of decision

17.—(1) On [making] a decision referred to in regulation 15(b) or 19, the FCA must notify its decision to the securitisation repository concerned.

(2) A refusal of an application to register under regulation 15(b) comes into effect on the fifth working day after it is made.

(3) A withdrawal of registration under regulation 19(3) takes effect—

(a) immediately upon the making of the decision if the notice states that is the case;

(b) on such date as may be specified in that notice; or

(c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.

(4) A decision to withdraw registration on the FCA's own initiative under regulation 19(1) or (2) may be expressed to take effect immediately (or on a specified date) only if the FCA, having regard to the ground on which it is exercising its power reasonably considers that it is necessary for the withdrawal or direction to take effect immediately (or on that date).

(5) If the decision referred to in regulation 15(b) or 19 is—

(a) to refuse the application for registration,

(b) to exercise the FCA's power under regulation 19(1) or (2) to withdraw the registration of the securitisation repository on the FCA's own initiative, or

(c) to refuse an application made by a securitisation repository under regulation 19(3) to withdraw the registration of the securitisation repository,

the FCA must give the securitisation repository a written notice.

(6) A written notice under paragraph (5) must—

(a) give details of the decision made by the FCA;

(b) state the FCA's reasons for the decision;

(c) state when the decision takes effect;

(d) inform the securitisation repository that it may either—

(i) request a review of the decision by the FCA, and make written representations for the purpose of the review, within such period as may be specified in the notice; or

(ii) refer the matter to the Tribunal within such period as may be specified in the notice; and

(e) indicate the procedure on a reference to the Tribunal.

(7) If the securitisation repository requests a review of the decision made by the FCA ("the original decision") the FCA must consider any written representations made by the securitisation repository and review the original decision.

(8) On a review under paragraph (7), the FCA may make any decision ("the new decision") it could have made on the application.

(9) The FCA must give the securitisation repository written notice of its decision on the review.

(10) This paragraph applies to a decision—

(a) to maintain a decision to refuse an application for registration, made under regulation 15(b);

(b) to refuse to revoke a decision made under regulation 19(1) or (2) to withdraw the registration of the securitisation repository on the FCA's own initiative; or

(c) to maintain a decision to refuse an application from a securitisation repository under regulation 19(3) to withdraw the registration of the securitisation repository.

(11) A written notice in relation to a decision to which paragraph (10) applies must—

(a) give details of the new decision made by the FCA;

(b) state the FCA's reasons for the new decision;

(c) state whether the decision takes effect immediately or on such date as may be specified in the notice;

(d) inform the securitisation repository that it may, within such period as may be specified in the notice, refer the new decision to the Tribunal; and

(e) indicate the procedure on a reference to the Tribunal.

Changes to conditions for registration

18. A securitisation repository must, without undue delay, notify the FCA of any material changes to the conditions for registration.

Withdrawal of registration

19.—(1) The FCA may, on its own initiative, withdraw the registration of a securitisation repository where the securitisation repository—

(a) expressly renounces the registration or has provided no services for the preceding 6 months;

(b) obtained the registration by making false statements or by any other irregular means; or

(c) no longer meets the conditions for registration.

(2) The FCA may also, on its own initiative, withdraw the registration of a securitisation repository where it is desirable to do so to advance one or more of its operational objectives set out in section 1B(3) of FSMA 2000.

(3) The FCA may, on an application by a securitisation repository, withdraw the registration of the securitisation repository.

(4) The decision to withdraw the registration of a securitisation repository under this regulation must be reflected in the Register.

Tribunal

20.—(1) A securitisation repository may, subject to paragraph (2), refer to the Tribunal the FCA's decision to—

(a) refuse to register the securitisation repository under regulation 15(b);

(b) exercise its power under regulation 19(1) or (2) to withdraw the registration of a securitisation repository; or

(c) refuse the securitisation repository's application under regulation 19(3) to withdraw its registration.

(2) Where there is a review under regulation 17(7), paragraph (1) applies only in relation to the FCA's decision in response to that review.

CHAPTER 3

Supervision and enforcement: securitisation repositories

FCA power to impose requirements

21.—(1) If the FCA considers that—

(a) a securitisation repository has contravened, or is likely to contravene, a requirement imposed by or under this Part, or

(b) it is desirable to exercise the power in order to advance one or more of its operational objectives set out in section 1B(3) of FSMA 2000,

it may impose, for such period as it considers appropriate, such requirements in relation to the carrying on of securitisation repository activities as it considers necessary or expedient.

(2) A requirement may, in particular, be imposed so as to require a securitisation repository to take, or refrain from taking, specified action.

(3) The FCA may—

(a) withdraw a requirement; or

(b) vary a requirement so as to reduce the period for which it has effect or otherwise to limit its effect.

(4) The imposition of the requirement takes effect—

(a) immediately, if the notice given under sub-paragraph (6) states that that is the case; or

(b) on such date as may be specified in the notice.

(5) The imposition of a requirement may be expressed to take effect immediately, or on a specified date, only if the FCA, having regard to the ground on which it is exercising its power, reasonably considers that it is necessary for the imposition of the requirement to take effect immediately, or on that date.

(6) If the FCA proposes to impose, or imposes a requirement, it must give the securitisation repository written notice.

(7) The notice must—

(a) give details of the requirement;

(b) state the FCA's reasons for imposition of the requirement;

(c) inform the securitisation repository that it may make representations to the FCA within such period as may be specified in the notice, whether or not the securitisation repository has referred the matter to the Tribunal;

(d) inform the securitisation repository of when the imposition of the requirement takes effect; and

(e) inform the securitisation repository of its right to refer the matter to the Tribunal.

(8) The FCA may extend the period allowed under the notice for making representations.

(9) If, having considered any representations made by the securitisation repository, the FCA decides—

(a) to impose the requirement in the way proposed, or

(b) if the requirement has been imposed, not to rescind the imposition of the requirement,

it must give the securitisation repository written notice.

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(10) If, having considered any representations made by the securitisation repository, the FCA decides—

(a) not to impose the requirement in the way proposed,

(b) to impose a different requirement, or

(c) to rescind a requirement which has effect,

it must give the securitisation repository written notice.

(11) A notice under sub-paragraph (9) must inform the securitisation repository of its right to refer the matter to the Tribunal.

(12) A notice under sub-paragraph (10)(b) must comply with sub-paragraph (7).

(13) If a notice informs the securitisation repository of its right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(14) A securitisation repository may refer to the Tribunal the FCA's decision to impose a requirement under this regulation.

Powers of the FCA in relation to securitisation repositories

22.—(1) Part 1 of the Schedule gives the FCA further powers to enforce this Part and impose penalties.

(2) Part 2 of the Schedule applies FSMA 2000 and secondary legislation made under it with modifications.

PART 7

Simple, transparent and standardised securitisations

Interpretation of Part 7

23. In this Part—

"STS" means simple, transparent and standardised;

"STS criteria" means the criteria provided for in FCA rules in relation to—

(a) simple, transparent and standardised non-ABCP securitisations, or

(b) simple, transparent and standardised ABCP securitisations;

"STS notification" means a notification referred to in regulation 25(1);

"STS securitisation" is a securitisation which satisfies each of the following conditions—

(a) the relevant STS criteria are satisfied;

(b) the FCA has been notified pursuant to FCA rules [requiring notification of securitisations complying with the STS criteria] [*references to the rules made by the FCA will be included in the finalised text*];

(c) the notification is included in the list published by the FCA referred to in regulation 25;

(d) the securitisation satisfies the relevant requirements of regulation 24.

Restrictions on establishment of originator and sponsor

24.—(1) The originator and sponsor involved in a securitisation—

(a) which satisfies conditions (a), (b) and (c) referred to in the definition of "STS securitisation", but

(b) which is not an ABCP programme or an ABCP transaction,

must be established in the United Kingdom.

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(2) The sponsor involved in an ABCP programme which satisfies conditions (a), (b) and (c) referred to in the definition of "STS securitisation" must be established in the United Kingdom.

(3) The sponsor involved in an ABCP programme which is not a STS securitisation must be established in the United Kingdom if an ABCP transaction within that programme satisfies conditions (a), (b) and (c) referred to in the definition of "STS securitisation".

[*note:* Article 18(3) of the Securitisation Regulation is not replaced in this draft SI but the policy is that it is to continue in force until 31 December 2024, and that while it remains in force EU STS securitisations will continue to be considered STS.]

STS notification requirements

25.—(1) Where the sponsor or originator of a securitisation notifies the FCA that the securitisation satisfies conditions (a), (b) and (d) referred to in the definition of "STS securitisation", the FCA must publish the notification on its official website.

(2) The FCA must maintain on its official website a list of all the securitisations so notified to it.

(3) The FCA must add each securitisation so notified to that list immediately.

(4) The FCA must update the list where a securitisation is no longer considered to be a STS securitisation following a decision of the FCA or a notification by the originator or sponsor concerned.

(5) Where the PRA has imposed a relevant sanction in relation to a STS securitisation, it must notify the FCA of that fact immediately.

(6) Where the FCA imposes a relevant sanction in relation to a STS securitisation or receives a notification under paragraph (5), it must immediately indicate that fact in relation to the securitisation concerned on the list which it maintains in accordance with paragraph (2).

(7) In this regulation, "relevant sanction" means any sanction imposed or other measure taken where an originator, sponsor, original lender, securitisation special purpose entity or third party verifier fails to meet the requirements set out in these Regulations or FCA or PRA rules [*insert references to Securitisation chapters of the FCA and PRA rules in the final version of this SI*] applicable to them in their capacity as originator, sponsor, original lender, securitisation special purpose entity or third party verifier (as the case may be);

PART 8

Authorisation of third party verifying STS compliance

Interpretation of Part 8

26. In this Part—

"third party verification service" means a service provided by a third party of assessing of the compliance of a securitisation with the STS criteria;

"third party verifier" means a person authorised to provide a third party verification service.

Third party verifying STS compliance

27.—(1) A third party must be authorised by the FCA to assess the compliance of securitisations with the STS criteria.

(2) The FCA must grant the authorisation to provide a third party verification service if the following conditions are met—

(a) the third party only charges non-discriminatory and cost-based fees to the originators, sponsors or securitisation special purpose entities involved in the securitisations which the third party assesses without charging different fees depending on, or correlated to, the results of its assessment;

(b) the third party is neither a regulated entity as defined in Article 2(4) of Directive 2002/87/EC of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate nor a credit rating agency as defined in Article 3(1) of CRAR, and the performance of the third party's other activities does not compromise the independence or integrity of its assessment;

(c) the third party must not provide any form of advisory, audit or equivalent service to the originator, sponsor or securitisation special purpose entity involved in the securitisations which the third party assesses;

(d) the members of the management body of the third party have professional qualifications, knowledge and experience that are adequate for the task of the third party and they are of good repute and integrity;

(e) the management body of the third party includes at least one third, but no fewer than two, independent directors;

(f) the third party takes all necessary steps to ensure that the verification of compliance with the STS criteria is not affected by any existing or potential conflicts of interest or business relationship involving the third party, its shareholders or members, managers, employees or any other natural person whose services are placed at the disposal or under the control of the third party, and to that end—

  (i) the third party must establish, maintain, enforce and document an effective internal control system governing the implementation of policies and procedures to identify and prevent potential conflicts of interest;

  (ii) potential or existing conflicts of interest which have been identified must be eliminated or mitigated and disclosed without delay;

  (iii) the third party must establish, maintain, enforce and document adequate procedures and processes to ensure the independence of the assessment of compliance with the STS criteria;

  (iv) the third party must periodically monitor and review those policies and procedures in order to evaluate their effectiveness and assess whether it is necessary to update them;

(g) the third party can demonstrate that it has proper operational safeguards and internal processes that enable it to assess compliance with the STS criteria.

(3) The FCA must cancel the authorisation of a third party verifier when it considers the third party verifier to be materially non-compliant with paragraph (2).

(4) A third party verifier must notify the FCA without delay of any material changes to the information in respect of paragraph (2), or any other changes that could reasonably be considered to affect the assessment of the FCA.

(5) The FCA may charge cost-based fees to an applicant for authorisation under this Part and to a third party verifier, in order to cover necessary expenditure relating to the assessment of applications for authorisation and to the subsequent monitoring of compliance with the conditions set out in this Part.

(6) The FCA may make rules specifying the information to be provided to it in an application for authorisation to provide a third party verification service.

Application for authorisation to provide a third party verification service

28.—(1) An application for authorisation to provide a third party verification service must—

(a) be made in such manner as the FCA may direct; and

(b) contain, or be accompanied by, such information as may be required under FCA rules under regulation 27(6) and such other information as the FCA may reasonably require.

(2) At any time after the application is received and before it is determined, the FCA may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(3) The FCA may give different directions, and may impose different requirements, in relation to different applications or categories of application.

(4) The FCA may require an applicant to provide information which the applicant is required to provide to it under this Part in such form, or to verify it in such a way, as the FCA may direct.

Determination of an application for authorisation to provide a third party verification service

29.—(1) The FCA must determine an application for authorisation to provide a third party verification service before the end of the period of six months beginning with the date on which it received the completed application.

(2) The FCA may determine an incomplete application if it considers it appropriate to do so, and it must in any event determine such an application within 12 months beginning with the date on which it received the application.

(3) The applicant may withdraw its application, by giving the FCA notice, at any time before the FCA determines it.

(4) If the FCA decides to grant an application it must give the applicant notice of its decision specifying the date on which the authorisation takes effect.

Temporary withdrawal of authorisation to provide a third party verification service

30.—(1) The FCA may decide to withdraw temporarily the authorisation of a third party verifier if it appears to the FCA that—

(a) the third party verifier is materially non-compliant with regulation 27(2);

(b) the third party verifier has failed, during a period of at least 12 months, to provide a third party verification service;

(c) the third party verifier has obtained the authorisation to provide a third party verification service through false statements or other irregular means;

(d) the third party verifier has failed to comply with regulation 27(4); or

(e) it is desirable to do so to advance one or more of the FCA's operational objectives set out in section 1B(3) of FSMA 2000.

(2) The FCA may—

(a) revoke the temporary withdrawal imposed under paragraph (1); or

(b) vary the period for which the temporary withdrawal has effect.

Temporary withdrawal of authorisation to provide a third party verification service: procedure

31.—(1) When the FCA exercises its functions under regulation 30, its decision takes effect—

(a) immediately, if the notice given under paragraph (3) states that that is the case;

(b) on such other date as may be specified in the notice; or

(c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.

(2) A decision of the FCA made under regulation 30 may be expressed to take effect immediately (or on a specified date) only if the FCA, having regard to the ground on which it is exercising this power, reasonably considers that it is necessary for the decision to take effect immediately (or on that date).

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(3) If the FCA proposes to exercise, or exercises, its functions under regulation 30, it must give the third party verifier written notice.

(4) The notice must—

(a) give details of the temporary withdrawal, or the revocation of the temporary withdrawal, or the variation of the temporary withdrawal, including the period of the temporary withdrawal;

(b) state the FCA's reasons for the temporary withdrawal, or the revocation of the temporary withdrawal or the variation of the temporary withdrawal;

(c) inform the third party verifier that they may make representations to the FCA within such period as may be specified in the notice (whether or not they referred the matter to the Tribunal);

(d) inform the third party verifier when the temporary withdrawal, or the revocation of the temporary withdrawal or the variation of the temporary withdrawal, is to take effect; and

(e) inform the third party verifier of their right to refer the matter to the Tribunal and provide an indication of the procedure for such a reference.

(5) The FCA may extend the period allowed in the notice given under paragraph (4)(c) for making representations.

(6) If, having considered any representations made by the third party verifier to whom the notice has been given under paragraph (3), the FCA decides—

(a) to withdraw temporarily, or revoke or vary the temporary withdrawal of the third party verifier's authorisation, in the way proposed;

(b) not to withdraw temporarily, or revoke or vary the temporary withdrawal of the third party verifier's authorisation, in the way proposed;

(c) to revoke the temporary withdrawal or variation of the temporary withdrawal which has taken effect; or

(d) if the temporary withdrawal or variation of the temporary withdrawal has taken effect, not to revoke the temporary withdrawal or variation of the temporary withdrawal; or

(e) to withdraw temporarily or vary the period of a withdrawal in a different way; it must give the third party verifier written notice of its decision.

(7) A notice under paragraph (6)(a), (d) or (e) must inform the third party verifier of their right to refer the matter to the Tribunal and provide an indication of the procedure for such a reference.

(8) For the purposes of paragraph (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8) of FSMA 2000.

(9) Where the authorisation of a third party verifier is temporarily withdrawn, the FCA must as soon as practicable update the register accordingly.

Cancellation of authorisation to provide a third party verification service on the initiative of the FCA

32.—(1) The FCA may cancel an authorisation to provide a third party verification service if it appears to the FCA that—

(a) the third party verifier is materially non-compliant with regulation 27(2);

(b) the third party verifier has failed, during a period of at least 12 months, to provide a third party verification service;

(c) the third party verifier has obtained the registration to provide third party verification services through false statements or other irregular means;

(d) the third party verifier has failed to comply with regulation 27(4); or

(e) it is desirable to do so to advance one or more of the FCA's operational objectives set out in section 1B(3) of FSMA 2000.

(2) Where the period for a reference to the Tribunal has expired without a reference being made, the FCA must as soon as practicable update the register accordingly.

Cancellation of authorisation to provide a third party verification service at request of third party verifier

33.—(1) The FCA may, on the application of a third party verifier, cancel its authorisation to provide a third party verification service.

(2) A request for cancellation of a person's authorisation under this regulation must be made in such a manner as the FCA may direct.

(3) The FCA may refuse an application under this regulation if it appears to it that it is desirable to do so in order to advance any of its operational objectives set out in section 1B(3) of FSMA 2000.

(4) An application under paragraph (1) must be determined by the FCA before the end of the period of 6 months beginning with the date on which it received the completed application.

(5) The FCA may determine an incomplete application if it considers it is appropriate to do so, and it must in any event determine such an application within 12 months beginning with the date on which it received the application.

(6) The applicant may withdraw its application, by giving the FCA notice, at any time before the FCA determines it.

(7) If the FCA decides to grant an application, it must give the applicant notice of its decision specifying the date on which the cancellation of the authorisation takes effect, and as soon as practicable update the register referred to in regulation 34 accordingly.

Register of third party verifiers

34.—(1) The FCA must maintain a register of all persons it has authorised as third party verifiers as provided for in regulation 27.

(2) The FCA must—

(a) publish the register online and make it available for public inspection; and

(b) update the register on a regular basis.

Warning notice

35.—(1) If the FCA proposes to—

(a) refuse an application for authorisation to provide a third party verification service under regulation 29 (determination of application for authorisation to provide a third party verification service);

(b) cancel a person's authorisation to provide a third party verification service under regulation 32 (cancellation of authorisation to provide a third party verification service on the initiative of the FCA); or

(c) refuse an application to cancel a person's authorisation to provide a third party verification service under regulation 33 (cancellation of authorisation to provide a third party verification service at request of third party verifier);

it must give the person a warning notice.

(2) A warning notice must inform the person concerned that the person may make representations to the FCA within such period as may be specified in the notice (whether or not the person concerned has referred the matter to the Tribunal).

Decision notice

36. If, having considered any representations made in response to the warning notice, the FCA decides to—

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(a) refuse an application for authorisation to provide a third party verification service under regulation 29 (determination of application for authorisation to provide a third party verification service);

(b) cancel a person's authorisation to provide a third party verification service under regulation 32 (cancellation of authorisation to provide a third party verification service on the initiative of the FCA);

(c) refuse an application to cancel a person's authorisation to provide a third party verification service under regulation 33 (cancellation of authorisation to provide a third party verification service at request of third party verifier);

it must without delay give the person concerned a decision notice.

Right to refer a matter to the Tribunal

37.—(1) If the FCA decides to refuse a person's application for authorisation to provide a third party verification service under regulation 29 (determination of application for authorisation to provide a third party verification service), the person concerned may refer the matter to the Tribunal.

(2) If the FCA decides to temporarily withdraw an authorisation to provide a third party verification service under regulation 31 (temporary withdrawal of authorisation to provide a third party verification service: procedure), or varies the details of the temporary withdrawal so as to extend the period it has effect, the person concerned may refer the matter to the Tribunal.

(3) If the FCA decides to cancel an authorisation to provide a third party verification service under regulation 32 (cancellation of authorisation to provide a third party verification service on the initiative of the FCA), the person concerned may refer the matter to the Tribunal.

(4) If the FCA refuses an application to cancel an authorisation to provide a third party verification service under regulation 33 (cancellation of authorisation to provide a third party verification service at request of third party verifier), the person concerned may refer the matter to the Tribunal.

Consultation in relation to taking certain enforcement action

38.—(1) The FCA must consult the PRA before giving a warning notice under regulation 35 or a decision notice under regulation 36 in relation to a person which has a qualifying relationship with a PRA-authorised person.

(2) A person has a qualifying relationship with a PRA-authorised person for the purposes of this regulation if the person is a member of the PRA-authorised person’s immediate group.

(3) In this regulation, “immediate group” has the meaning given in section 421ZA of FSMA 2000.

Powers of the FCA in relation to third party verifiers

39.—(1) Part 1 of the Schedule gives the FCA powers to enforce this Part and impose penalties.

(2) Part 2 of the Schedule applies FSMA 2000 and secondary legislation made under it with modifications.

PART 9

[Designation of activities for the purposes of FSMA 2000]

Activities specified as designated activities for the purposes of FSMA 2000

40.—(1) The following activities are specified as designated activities for the purposes of FSMA 2000—

(a) acting as one of the following in a securitisation—

(i) an originator,

(ii) a sponsor,

(iii) an original lender, or

(iv) a securitisation special purpose entity;

(b) selling a securitisation position to a retail client located in the United Kingdom.

(2) In this regulation "retail client" has the meaning given in the FCA Handbook.

FCA rules

41.—(1) The FCA may make rules relating to the designated activities specified in regulation [40] (see section 71N of FSMA 2000).

(2) [Rules made under paragraph (1) may not impose requirements on a PRA-authorised person with respect to —

(a) due diligence by a sponsor as regards a fully-supported ABCP transaction;

(b) the retention of an interest in a securitisation or the selection of the assets for the securitisation;

(c) the provision of information in relation to a securitisation;

(d) the inclusion of securitisation positions in the underlying exposures that may be used in a securitisation; or

(e) arrangements concerning the granting of credit applying to exposures to be securitised, or verification of the making of such arrangements where the originator purchases exposures from a third party on its own account.]

(3) Paragraph (2) does not apply to the imposition of requirements with respect to STS criteria or STS notifications.

(4) The FCA must consult the PRA before making rules under paragraph (1) imposing a requirement on a PRA-authorised person.

(5) The FCA may by notice suspend any rules made under paragraph (1) for such period as it considers appropriate (and see section 71N(6) which imposes a duty to consult the PRA beforehand).

(6) Rules under paragraph (1) may include provision enabling requirements imposed by the rules to be dispensed with, or modified, in such cases or circumstances as may be determined by the FCA under the rules (subject to paragraph (5)).

PART 10

Rule-making powers relating to small registered UK AIFMs as institutional investors

Due diligence requirements of small registered UK AIFMs as institutional investors

42.—(1) The FCA may make rules requiring a small registered UK AIFM—

(a) before holding a securitisation position—

(i) to verify specified matters relating to the securitisation position, and

(ii) to carry out an assessment of the risks involved in holding the securitisation position, having regard to specified matters;

(b) [while holding a securitisation position, to take specified measures to monitor its performance and the risks involved in continuing to hold it.]

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(2) References in paragraph (1) to a securitisation position do not include references to a securitisation position in relation to which the small registered UK AIFM is the originator, sponsor or original lender.

(3) In paragraph (1) "specified" means specified in the rules.

(4) In this regulation "small registered UK AIFM" has the meaning given in regulation 2(1) of the Alternative Investment Fund Managers Regulations 2013.

(5) The provisions of Part 9A of FSMA 2000 listed in paragraph (6) apply in relation to rules made by the FCA under paragraph (1) as they apply in relation to rules made by the FCA under that Act, but subject to the modifications in paragraph (7).

(6) Those provisions are—

(a) section 137T (general supplementary powers);

(b) section 138A (modification or waiver of rules);

(c) section 138BA (disapplication or modification of rules in individual cases);

(d) section 138C (evidential provisions);

(e) section 138D (actions for damages);

(f) section 138E (limits on effect of contravening rules);

(g) sections 138F, 138G and 138H (notification and verification);

(h) sections 138I and 138L (consultation);

(i) section 141A (power to make consequential amendments of references to rules).

(7) The modifications are that—

(a) section 137T applies as if the reference to authorised persons were a reference to small registered UK AIFMs, and

(b) section 138D applies as if the reference in subsection (2) to an authorised person were a reference to a small registered UK AIFM.

(8) For the purposes of the provisions of the Alternative Investment Fund Managers Regulations 2013 listed in paragraph (9), rules made by the FCA under paragraph (1) are to be taken to be implementing provisions as defined by regulation 2 of those regulations.

(9) Those provisions are—

(a) regulation 17 (grounds for revocation of registration);

(b) regulation 19 (grounds for suspension of registration);

(c) regulation 21 (disclosure obligations);

(d) regulation 22 (power of direction).

(10) In the provisions of FSMA 2000 listed in paragraph (11), any reference (however expressed) to provision made by, or a requirement imposed by, the Alternative Investment Fund Managers Regulations 2013 is to be taken to include a reference to provision made by, or a requirement imposed by, rules under paragraph (1).

(11) Those provisions are—

(a) subsection (2)(aa) of section 1L (supervision, monitoring and enforcement);]

(b) subsection (4)(ja)(ii) of section 168 (appointment of persons to carry out investigations in particular cases;

(c) subsections (2)(c) and (6)(b) of section 204A (meaning of "relevant requirement" and "appropriate regulator");

(d) subsection (6)(a)(iii) of section 380 (injunctions);

(e) subsection (9)(a)(iii) of section 382 (restitution orders);

(f) subsection (1A)(b) of section 398 (misleading FCA or PRA: residual cases).

(12) In section 1A of FSMA 2000 (the Financial Conduct Authority), the reference in subsection (6)(ca) to functions conferred on the FCA by or under the Alternative Investment Fund

Managers Regulations 2013 is to be taken to include a reference to the functions conferred on the FCA by this regulation.

PART 11

Making rules relating to securitisation

Matters to which the FCA and the PRA must have regard when making rules relating to securitisation

43.—(1) The coherence of the overall framework for the regulation of securitisation is specified for the purposes of section 138EA of FSMA 2000.

(2) The specification under paragraph (1) applies to the following—

(a) the powers of the FCA to make rules under [regulations 41 and 42],

(b) the powers of the FCA to make rules under section 137A of FSMA 2000 relating to securitisation, and

(c) the powers of the PRA to make rules under section 137G of FSMA 2000 relating to securitisation.

PART 12

Consequential amendments

Amendment to CRAR

44.—(1) Article 3(1) of CRAR is amended as follows.

(2) For point (l) substitute—

"(l) "securitisation instrument" means a financial instrument or other assets resulting from a securitisation (as defined in regulation 2 of the Securitisation Regulations 2023);".

Amendment to EMIR

45.—(1) Article 4(5) of EMIR is amended as follows.

(2) For point (a) substitute—

"(a) in the case of securitisation special purpose entities, the securitisation special purpose entity shall solely issue STS securitisations (as defined in regulation 2 of the Securitisation Regulations 2023);".

Amendment to the capital requirements regulation

46.—(1) The capital requirements regulation is amended as follows.

(2) In Article 242(10) (meaning of "simple, transparent and standardised securitisation" or "STS securitisation")—

(a) the words from "a securitisation" to the end become paragraph (a);

(b) at the end of that paragraph, insert—

"; or

(b) an STS equivalent non-UK securitisation as defined in regulation 2(1) of [the Securitisation Regulations 2023];".

Amendments to the Solvency 2 delegated regulation

47.—(1) Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) is amended as follows.

(2) in Article 1(18b) (meaning of "STS securitisation")—

(a) the words from "a securitisation" to the end become paragraph (a);

(b) at the end of that paragraph, insert—

"; or

(b) an STS equivalent non-UK securitisation as defined in regulation 2(1) of [the Securitisation Regulations 2023];".

[*Note*. Other consequential amendments are likely to be needed but have not been included in this draft]

name
name
Date Two of the Lords Commissioners of His Majesty's Treasury

SCHEDULE

Regulations 22 and 39

Supervision and enforcement

PART 1

Supervision and enforcement powers of FCA

[*Note*. This text is a placeholder for a Schedule giving the FCA supervision and enforcement powers in relation to securitisation repositories (Part 6), third party verifiers (Part 8) and designated securitisation activities (Part 9). It may also supplement Part 10 (small registered AIFMs). Either the powers would be set out in full or provisions from FSMA 2000 would be applied with modifications. Ancillary provisions of FSMA 2000, including in particular those listed below, would also be applied with necessary modifications.

Unless otherwise stated, the provisions would probably apply in relation to the enforcement of Part 6 (securitisation repositories), Part 8 (third party verifiers) and Part 9 (designated securitisation activities). Some provisions may apply too in relation to Part 10 (small registered AIFMs).

— Disciplinary powers relating to individuals: the FCA is likely to be given powers based on sections 66 to 70 of FSMA 2000 relating to Part 8 (third party verifiers).

— A power to issue guidance: the FCA is likely to be given power based on that set out in section 139A of FSMA 2000 to give guidance relating to Part 6 (securitisation repositories).

— A power to make rules: the Regulations may contain further provision about rules under Part 9, for example power for the regulators to disapply or modify rules. The FCA may be given some rule-making powers relating to Part 6 (securitisation repositories).

— Information gathering and investigation powers: the FCA is likely to be given powers to require information and institute investigations set out in Part 11 of FSMA 2000, and the Part 11 powers of entry and offences would also apply.

— A power to publish a statement of public censure and a power to impose an unlimited financial penalty: the powers would be based on those in Part 14 of FSMA 2000. In

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particular the FCA must issue a statement of policy with regard to financial penalties; a warning notice must be given before a decision is taken, giving the recipient the chance to make representations; there would be a right to have a penalty decision reviewed by the Tribunal.

— A power to apply for an injunction: the powers to seek an injunction under Part 25 of FSMA 2000 are likely to be applied.

— Tribunal: Part 9 of FSMA 2000 would be applied.

— Disclosure of information: sections 348, 349 and 352 of FSMA 2000 are likely to be applied.

— Notices: relevant provisions of Part 26 of FSMA 2000 would be applied.

— Offences: relevant provisions of Part 27 of FSMA 2000 would be applied.

— Fees: the power to charge fees would be applied.

— The regulations under Part 9 (designated activities) may make provision under new Part 5A of FSMA (eg under sections 71O to 71R).

The above note does not include all the supervision, enforcement and related powers that will eventually be needed by the FCA and PRA when the Regulations made. For example, these draft Regulations, and consequently this note, do not comprehensively cover the revocation and restatement of supervision and enforcement provision located in the Securitisation Regulations 2018.]

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations restate some provisions of Regulation (EU) 2017/2402 of 12th December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation ("the Securitisation Regulation"), in some cases with modifications. The restated provisions were revoked by *[add reference to Commencement Regulations]*; most other provisions revoked are restated (where appropriate with modifications) in rules made by the Financial Conduct Authority ("FCA") and Prudential Regulation Authority ("PRA") *[add references to Rules]*.

The revoked provisions of the Securitisation Regulation restated [in some cases with modifications] in these Regulations include—

- Article 4 (restrictions on establishing a securitisation special purpose entity in high risk jurisdiction);
- Article 5 (due diligence requirements for occupational pension schemes and a requirement for the FCA and PRA to make rules setting out due diligence requirements for certain other categories of institutional investors);
- [Article 7(2) sub-paragraph 2 (requirements for originators, sponsors and securitisation special purpose entities to make information available by means of a registered securitisation repository);]
- Article 8(2) sub-paragraph 2 (duties of the FCA and PRA to consult the Bank of England in relation to certain re-securitisations);
- Articles 10 to 15 (registration of securities repositories);
- Article 18(2) and (3) (location requirements for originators and sponsors of simple, transparent and standardised securitisations);
- Article 27 (requirements for the FCA to publish and maintain a list of simple, transparent and standardised securitisations);
- Article 28 (authorisation of third parties verifying compliance of securitisations with the criteria for a simple, transparent and standardised securitisation);

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- Article 28A, which is inserted by the Financial Services and Markets Act 2023 (Treasury power to designate a country or territory in relation to securitisations);
- [Article 30(3) and (4) (duties of the FCA and PRA to evaluate and monitor risk);]

The Regulations also restate Part 3 of, and Schedule 1 to, the Securitisation Regulations 2018 (S.I. 2018/1288) in so far as they relate to third party verifiers.

The Regulations designate certain securitisation activities for the purposes of FSMA 2000 (see Part 5A) and confer powers on the FCA to make rules in relation to these activities and in relation to the holding of securitisation positions by small registered UK AIFMs.

The Regulations specify a matter to which the FCA and PRA must have regard when making rules relating to securitisation.

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