HM Treasury

The Securitisation Regulation – Illustrative Statutory Instrument

Policy Note

December 2022

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ISBN 978-1-915596-22-2 PU: 3243

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Chapter 1
Overview

1.1 The Financial Services and Markets (FSM) Bill was introduced to Parliament on 20 July 2022. The FSM Bill will repeal retained EU law on financial services so that it can be replaced with an approach to regulation that is designed for the UK, building on the existing UK model principally set out in the Financial Services and Markets Act 2000 (FSMA). Under this model of regulation, the financial services regulators generally make the detailed regulatory requirements that apply to firms, operating within a framework established by government and Parliament. Adapting to this model implements the outcomes of the Future Regulatory Framework (FRF) review.

1.2 The purpose of this note is to explain how His Majesty's (HM) Treasury may use powers introduced in the FSM Bill to move to a comprehensive FSMA model for the regulation of securitisation. Following the repeal of retained EU law in this area, FSM Bill powers will be used to introduce new provisions on securitisation and restate (with amendments) some provisions from the retained EU law. Other elements will either be replaced (potentially with changes) in the rulebooks of the financial services regulators, or they will not be replaced, as appropriate.

Policy background

1.3 Securitisation is the process of pooling various exposures to form a financial instrument that can be marketed to investors. This packaging allows lenders (such as banks) to transfer the risks of loans or assets (such as mortgages, auto loans, or consumer loans) to other banks or investors. These financial instruments are 'tranched', which means that they carry different levels of risk and return to suit the appetite of different investors. This process can help to free up lenders' balance sheets to allow for further lending to the real economy.

1.4 Securitisation activity in the UK is primarily regulated under the UK Securitisation Regulation (Sec Reg) – the retained UK version of the EU Securitisation Regulation.[1] The Sec Reg aimed to strengthen the legislative framework for securitisations after the Global Financial Crisis and to revive high-quality securitisation markets.

1.5 HM Treasury conducted a review of the Sec Reg in 2021. The review presented an opportunity to consider ways in which the Sec Reg

[1] Regulation (EU) 2017/2402. Another significant legislative instrument relating to securitisation in the UK is the Securitisation Regulations 2018. Like the Sec Reg, the Securitisation Regulations 2018 are listed in Schedule 1 to the FSM Bill and are therefore retained EU financial services law to be revoked under clause 1 of the Bill.

could be improved to ensure the regime is as effective as it can be. The review's overarching aims were:

- To bolster securitisation standards in the UK in order to enhance investor protection and promote market transparency; and
- To support and develop securitisation markets in the UK, including through the increased issuance of Simple, Transparent, and Standardised (STS)[2] securitisations, in order to ultimately increase their contribution to the real economy.

1.6 As outlined in the report which set out the conclusions of the review, HM Treasury is committed to working with the FCA and the PRA to bring forward, where appropriate, reforms in the following areas:

- Certain risk retention provisions, for example in relation to (i) transferring the risk retention manager and (ii) risk retention in securitisations of non-performing exposures;
- The definitions of public[3] and private[4] securitisation, as well as the disclosure requirements for certain securitisations, to ensure they are appropriate;
- Due diligence requirements for institutional investors when investing in non-UK securitisations, to provide greater clarity on what is required; and
- The definition of institutional investor as it relates to certain unauthorised non-UK Alternative Investment Fund Managers (AIFMs) who are currently in scope of due diligence requirements, so that these requirements do not disincentivise these firms from seeking investors in the UK, and to address extraterritorial supervision and enforcement problems.

1.7 The report also noted HM Treasury would introduce a regime to recognise equivalent STS securitisations issued by entities established outside the UK. This has been included in the FSM Bill as introduced to Parliament.[5]

1.8 HM Treasury stated in the report that it will ensure the outcomes of the Sec Reg review will be delivered in line with the FRF review. This means that the financial services regulators will be responsible for

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[2] STS securitisations are designed to make it easier for investors to understand and assess the risks of a securitisation investment by excluding more complex features. The UK STS framework is in line with international standards for Simple, Transparent, and Comparable (STC) securitisations, set by the Basel Committee on Banking Supervision (BCBS) and International Organization of Securities Commissions (IOSCO). Some firms, including banks and insurance firms, who invest in STS securitisations can benefit from preferential capital treatment for these investments, compared to investing in non-STS securitisations.

[3] Currently, public securitisations are those where a prospectus has to be drawn up under s. 85 FSMA and accompanying FCA rules.

[4] Private securitisations are those that are not subject to the above prospectus requirements.

[5] See Schedule 2 – Transitional amendments, Part 3 – Amendments to the EU Securitisation Regulation.

making most firm-facing requirements, while HM Treasury will set the scope and core elements of the regulatory framework for securitisation in legislation.

Summary of the illustrative statutory instrument

1.9 The illustrative statutory instrument (SI) published alongside this note – the Securitisation Regulations 2023[6] – seeks to demonstrate how the powers in the FSM Bill may be used to deliver the outcomes of the FRF review in respect of the Sec Reg.

1.10 The FSM Bill will repeal the Sec Reg. This repeal will be commenced at the appropriate time by HM Treasury making regulations following Royal Assent of the Bill. The illustrative SI shows how, following the commencement of the repeal of the Sec Reg, HM Treasury intends to set the scope of regulatory requirements for securitisation (that is, to which entities requirements should apply). The financial services regulators will set most firm-facing requirements in their rules.

1.11 Securitisations can be originated by, sponsored by, issued by, sold by, or use original loans made by (collectively referred to in this note as 'provided' by)[7] any entity – authorised or unauthorised. All entities who provide securitisations are currently subject to requirements in the Sec Reg (unlike entities who invest in a securitisation – see paragraph 1.16). HM Treasury considers this is appropriate to maintain.

1.12 To give this effect, HM Treasury is proposing to use a key new element of the FRF model – the Designated Activities Regime (DAR), provided for in clause 8 of the FSM Bill. The DAR is designed to enable the FCA to make rules in respect of activities, products, or conduct which may not be regulated activities under FSMA, and which apply to a broader range of entities than authorised persons. Because rules for providing securitisations should apply to both authorised and unauthorised entities, HM Treasury considers this to be an appropriate framework to regulate the provision of securitisation.

1.13 The illustrative SI therefore shows how HM Treasury intends to apply the DAR and enable the FCA to make rules for any entities who carry on the designated activities, including by granting the FCA additional rulemaking powers for unauthorised persons.

1.14 The FCA is currently responsible for the supervision of all entities, including PRA-authorised persons, with respect to certain requirements for providing securitisations now in the Sec Reg (selling securitisations to retail clients[8] and the designation of securitisation as

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[6] Final title to be confirmed.

[7] This corresponds to the terms originator, sponsor, securitisation special purpose entity (SSPE), and original lender as defined in article 2 of the Sec Reg, and seller of a securitisation, as referred to in article 3.

[8] As set out in article 3 of the Sec Reg.

STS[9]). When it comes to other requirements for providing securitisations (including risk retention, disclosures, re-securitisation, and credit-granting[10]), the PRA is responsible for the supervision of PRA-authorised persons, while the FCA remains responsible for the supervision of other entities (with one exception, see paragraph 1.15). HM Treasury's intention is to preserve this current split of regulatory responsibilities between the FCA and the PRA. This is demonstrated in the illustrative SI by carving out PRA-authorised persons from certain FCA rules to be made under the DAR.

1.15 HM Treasury intends to change the regulatory responsibility for supervising compliance of occupational pension schemes (OPS) with requirements for providing securitisations. OPS are currently supervised by The Pensions Regulator (TPR) for compliance with these requirements, but they will be supervised by the FCA after the repeal of the Sec Reg is commenced. This is because the FCA currently supervises compliance with Sec Reg requirements for providing securitisations for all unauthorised persons, and therefore their remit already goes beyond just FCA-authorised persons. It is considered more appropriate for the FCA to take on the supervision of the few (if any) OPS who may provide securitisations.

1.16 On the investment side, requirements in the Sec Reg currently apply only to institutional investors who invest in a securitisation.[11] This primarily includes authorised persons (those authorised by the FCA or the PRA) but also a small number of specific unauthorised persons: OPS, some non-UK AIFMs, and small UK AIFMs, the last of which are registered but not authorised by the FCA. HM Treasury considers it appropriate to maintain this scope, subject to any changes to exclude certain non-UK AIFMs (as described in paragraph 1.6).

1.17 The illustrative SI does this by defining 'institutional investor' in legislation. It also imposes an obligation on the FCA and the PRA to make rules for relevant institutional investors to conduct due diligence when investing in a securitisation. This ensures the scope of firms subject to due diligence requirements is clearly set by legislation. The FCA is also granted a specific power to make due diligence rules for small registered UK AIFMs when investing in securitisation positions.

1.18 Finally, OPS are currently supervised by TPR for compliance with Sec Reg requirements regarding investing in securitisations. This will remain the case. TPR does not have rulemaking powers as it is not a FSMA regulator. Therefore, the illustrative SI restates the due diligence requirements for OPS in legislation, so they continue to apply and so TPR can continue to supervise OPS for compliance with them.

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[9] As set out in articles 18 to 27 of the Sec Reg.

[10] As set out in articles 6 to 9 of the Sec Reg, respectively. Further details of the allocation of responsibilities between the FCA and the PRA, including requirements for sponsors to perform due diligence currently set out in article 5(2) of the Sec Reg, are still being considered.

[11] These requirements are set out in article 5 of the Sec Reg.

1.19 Overall, the proposed approach in this illustrative SI is intended to maintain the status quo for regulator responsibilities (except for the change from TPR to the FCA in relation to some requirements for OPS), the scope of firms subject to requirements, and definitions for what constitutes a securitisation.

1.20 This SI is being published to illustrate how powers in the FSM Bill could be used in relation to securitisation and should not be treated as finalised. The provisions in the SI, as well as the powers listed as being relied on, may change. Clause numbers in this note relate to the FSM Bill as introduced to Parliament. Square brackets are used in the illustrative SI to identify where the wording and effect of certain items are particularly likely to change.

1.21 Important points of detail, such as the additional detail of enforcement provisions, transitional provisions, and the full scope of the consequential amendments across other legislation have not been included in this draft. The illustrative SI also does not cover the full range of securitisation legislation revoked and likely to be restated, for example elements of the Securitisation Regulations 2018.

1.22 **The exact drafting, design, and format of this SI is therefore not final and will continue to develop before the final legislation is laid before Parliament following Royal Assent of the FSM Bill.** For enquiries, please contact SecuritisationReview@HMTreasury.gov.uk.

Chapter 2

How are the Financial Services and Markets Bill powers being used?

New provisions to be introduced in legislation

Regulatory perimeter: Provision of securitisation ('sell-side')

2.1 To set the regulatory perimeter for providing securitisation, Part 9 of the illustrative SI designates a number of activities under new s. 71K(1) FSMA as introduced by clause 8 of the FSM Bill, which provides the FCA with rulemaking powers for these designated activities under new s. 71N(1) FSMA. Rules related to the carrying on of these designated activities will apply to both authorised and unauthorised persons. The following will be designated activities:

- Acting as one of the following in a securitisation:
    - An originator – an entity which either 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;
    - A sponsor – a credit institution or investment firm which is not an originator and either a) establishes and manages an Asset Backed Commercial Paper (ABCP) programme[12] or other securitisation that purchases exposures from third parties; or b) 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;
    - An original lender – an entity which, itself or through related entities, directly or indirectly, concluded the original

[12] 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.

agreement which created the obligations or potential obligations of the debtor or potential debtor giving rise to the exposure being securitised; and

- A securitisation special purpose entity (SSPE) – 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 and the structure of which is intended to isolate the obligations of the SSPE from those of the originator.

- Selling a securitisation position to a retail client located in the UK.

2.2 To reflect the regulators' respective responsibilities, the FCA will not be permitted to make rules using the DAR rulemaking powers in certain areas for PRA-authorised firms. The PRA is expected to make rules in respect of these areas for PRA-authorised firms using their existing general rulemaking powers.

Regulatory perimeter: Investment in securitisation ('buy-side')

2.3 The regulatory perimeter will also be established by setting the definition of institutional investor in Part 1 of the illustrative SI under clauses 4 and 72(5) of the FSM Bill, and a corresponding obligation on the FCA and PRA in Part 5 under new s. 3RE(1) FSMA as introduced by clause 28 of the FSM Bill. While it is still being considered, the obligation intends to require the FCA and the PRA to make general rules imposing due diligence requirements on relevant institutional investors in a securitisation. This is to ensure clarity in legislation about the scope of firms who should be subject to these requirements

2.4 Additionally, in Part 10, the FCA will be provided with a specific rulemaking power for small registered UK AIFMs under clauses 4 and 72(5) of the FSM Bill, relying on clause 4(2) and likely the purpose listed in clause 3(2)(b), as well as clause 4(5). This is needed to ensure that the FCA can make due diligence requirements for small registered UK AIFMs as institutional investors.

Regulatory perimeter: Other entities

2.5 Finally, the regulatory perimeter will be maintained in relation to Securitisation Repositories (SRs)[13] and Third-Party Verifiers (TPVs).[14] These firms are registered or authorised with the FCA, and therefore will not be subject to the DAR (by contrast, the DAR is generally not expected to involve requirements for registration or authorisation).

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[13] A Securitisation Repository (SR) is a legal entity that centrally collects and maintains the records of securitisations.

[14] A Third-Party Verifier (TPV) can be used by an originator, sponsor, or SSPE to check whether a securitisation is compliant with criteria for STS securitisation.

Powers for the FCA in relation to these entities are included in Parts 6 and 8 of the illustrative SI (however, as they are restated, not new, provisions, they are described in paragraph 2.13).

Matters to which the FCA and PRA must have regard

2.6 Under new s. 138EA(3) FSMA as introduced by clause 29 of the FSM Bill, Part 11 of the illustrative SI sets a requirement for the FCA and the PRA to have regard to a specific matter when making rules in relation to securitisation. As set out in its broader policy statement on the repeal of retained EU law and its replacement with a regulatory framework specifically tailored to the UK, HM Treasury intends to use this power only when necessary.

2.7 The Sec Reg is unique to many other pieces of retained EU law on financial services because the FCA and the PRA (as well as TPR) are currently responsible for supervising compliance of their firms with requirements of the Sec Reg. For example, the Sec Reg contains a requirement for the originator, sponsor, or original lender of a securitisation to maintain a material net economic interest in the securitisation of at least 5% (risk retention). Once the Sec Reg is repealed, the FCA and the PRA are expected to make rules covering some of the same areas, such as risk retention, for different sets of firms. This risks fracturing the regime which currently exists and increasing complexity.

2.8 Given the importance of the regulatory regime being clear and coherent, HM Treasury intends to require the FCA and the PRA to have regard to the coherence of the overall framework for the regulation of securitisation when making relevant rules. This requirement is expected to apply on an ongoing basis.

2.9 Separately, the Sec Reg is being prioritised in the process of repealing retained EU law and its replacement with a regulatory framework specifically tailored to the UK because there are areas for reform which HM Treasury has committed to, as outlined by its 2021 Sec Reg review. HM Treasury is considering the best way of engaging with the regulators in relation to the timely delivery of appropriate reforms in these areas.

Provisions to be restated in legislation

2.10 The illustrative SI sets out the provisions of the Sec Reg which should be restated in legislation after it is repealed. This includes key definitions which need to be maintained to support provisions in the SI.

2.11 Part 4 of the illustrative SI restates the power for HM Treasury to designate other jurisdictions in relation to non-UK STS equivalent securitisations, as introduced in Part 3 of Schedule 2 to the FSM Bill.[15] This restatement is made under clauses 4 and 72(5) of the FSM Bill. The

15 For more information on the STS securitisation equivalence regime, please refer to the explanatory notes to the Bill, paragraphs 106 to 114 and 1214 to 1224.

illustrative SI makes consequential amendments relying on clause 70(2)(c) of the FSM Bill to reflect the fact that the Sec Reg and related legislation, which are referenced in the STS equivalence regime in the Bill, will be repealed.

2.12 The illustrative SI also restates the following firm-facing requirements which are more appropriate to maintain in legislation under clauses 4 and 72(5) of the FSM Bill, relying on clause 4(2)(a) where appropriate:

- A ban on SSPEs being established in certain high-risk jurisdictions (see Part 3 of the illustrative SI). That is because this requirement relates to terrorist financing, money laundering, and international tax cooperation – but the third of these does not come within either the FCA's or the PRA's remit;
- Due diligence requirements for OPS when they invest in securitisations directly, thus acting as institutional investors (as explained in paragraph 1.18) (see Part 5); and
- The requirement for originators and/or sponsors of STS securitisations to be established in the UK for the securitisation to be designated as STS (see Part 7). This is because matters related to jurisdictional scope should be set in legislation, as international issues are within the government's remit.

2.13 Finally, the illustrative SI restates the following provisions of the Sec Reg under clauses 4 and 72(5) of the FSM Bill, relying on clause 4(2)(a) where appropriate:

- Registration requirements for SRs and related powers for the FCA (see Part 6 of the illustrative SI). These will remain in legislation as they set the regime for FCA registration of SRs;
- An authorisation regime for TPVs and related powers for the FCA (see Part 8). As above, these will remain in legislation as they set the regime for FCA authorisation of TPVs;
- Requirements for the FCA for the above registration and authorisation processes. For example, this includes a requirement for the FCA to examine applications for registration of an SR within 40 working days. This is because HM Treasury considers it is appropriate to maintain the existing processing requirements on the FCA for these regimes, to ensure the same standard of timeliness;
- Requirements for the FCA and the PRA in relation to supervisory practices in Part 2 of the illustrative SI. For example, this includes a requirement for the FCA and PRA to consult the Bank of England before granting permission to a credit institution or investment firm to include a securitisation position as an underlying exposure in a securitisation (known as 're-securitisation'). This is while HM Treasury

considers further whether and how this consultation requirement should be restated; and

- Amendments to other retained EU law which need to be maintained in legislation until revocation of those regulations takes place (see Part 12). These amendments are also made under clause 70(2)(c) of the FSM Bill.

Provisions to be repealed without replacement

2.14 Provisions which do not fit the FSMA model and have no further purpose will be repealed without replacement. For example, technical standards are a type of legal instrument which is derived from EU law. Over time, according to priority, with some occurring in a second phase of work, the repeal of the FCA's and the PRA's powers to make technical standards will be commenced, as they are expected to use their rulemaking powers to replace the content of these technical standards.

2.15 The responsibility of TPR to supervise compliance of OPS with Sec Reg requirements when acting as an originator, sponsor, original lender, SSPE, or seller of a securitisation, will also be repealed without replacement, because this responsibility is being transferred to the FCA.

2.16 Finally, some obligations on the regulators will also be repealed without replacement where HM Treasury is content these duplicate other requirements or processes that are already in place.

Provisions to be repealed from legislation and replaced in regulator rules

2.17 Most of the Sec Reg deals with specific regulatory requirements that apply directly to persons engaging in securitisation activity. Upon commencement of the repeal of the Sec Reg, most of these firm-facing requirements are expected not to be restated in legislation, but instead to be replaced (with potential changes) by FCA and PRA rules. This will include those definitions now in the Sec Reg which support the firm-facing requirements and do not support any legislative provisions.

2.18 The financial services regulators' exact rulemaking approach for the firm-facing requirements is still under development. However, in its report on the Sec Reg review, HM Treasury concluded that the requirements in the Sec Reg overall remain an important element of the regulation of securitisation in the UK. Therefore, the majority of these requirements are expected to be maintained in FCA and PRA rules, as appropriate. In addition, the FCA and the PRA are expected to consider the relevant reform areas identified in HM Treasury's report and to continue to monitor the UK securitisation market. They intend to set out their detailed approach to replacement rules for the firm-facing requirements currently set out in the Sec Reg, including any appropriate reforms, in consultations beginning next year.

2.19 Separately to these rules, which replace requirements currently in the Sec Reg (with any appropriate changes), the PRA is also expected to examine the capital and liquidity treatment of certain securitisations,

including as part of the PRA's implementation of the Basel 3.1 banking standards and reforms to Solvency II.

Annex: Detailed explanation of the illustrative statutory instrument

Part 1

A.1 Part 1 of the illustrative SI includes the citation, commencement, and extent of these regulations. It is expected these will come into force in 2023 at the earliest.

A.2 Part 1 also includes definitions which are required to support the legislative framework for the regulation of securitisation. Many of these definitions are restated from the Sec Reg. The definition of 'securitisation' is adapted to show how definitions may work following the commencement of the repeal of all retained EU law on financial services. The Sec Reg currently states that securitisations cannot create exposures which have certain characteristics, cross-referring to article 147(8) of the Capital Requirements Regulation (CRR). Parts of the CRR will be repealed to implement the Basel 3.1 standards using powers in the Financial Services Act 2021, and the FSM Bill will repeal the remainder. To account for this, the illustrative SI directly states the characteristics of the exposures in question rather than cross-referring to the CRR.

A.3 Other definitions are not yet adapted to a post-FRF statute book and retain cross-references to retained EU law. These will be addressed either in the final version of this SI, or when the repeal of the retained EU law being cross-referred to is commenced, as appropriate.

A.4 Finally, some new definitions are created, for example the definition of 'STS securitisation' (see also Part 7 of the illustrative SI and paragraph A.15). STS securitisations are not explicitly defined in the Sec Reg, but this definition is considered necessary to support the legislative framework, so it is introduced here. The meaning of what an 'STS securitisation' is has not changed from the meaning currently in the Sec Reg, except to account for the fact that most requirements for STS securitisations will be in FCA rules rather than legislation.

Part 2

A.5 Part 2 of the illustrative SI restates some of the requirements for the FCA and the PRA which are currently contained in articles 8 and 30 of the Sec Reg. For example, regulation 4 requires the appropriate

regulator (either the FCA or the PRA) to consult the Bank of England before it grants permission for a credit institution or investment firm to include a securitisation position as an underlying exposure in a securitisation (known as 're-securitisation'). This is restated from article 8(2) of the Sec Reg.

A.6 HM Treasury is considering which of these requirements are necessary to maintain. Where it is concluded that a requirement is indeed necessary, it will be restated in legislation.

A.7 Other requirements for the regulators currently in the Sec Reg, such as that in article 30(2) which requires regulators to regularly review the arrangements, processes, and mechanisms that parties to a securitisation have put in place to comply with the Regulation, are not restated because they are unnecessary. It is considered that the actions required by article 30(2) are regularly done by the regulators under their existing statutory objectives, so there is no need to expressly include this requirement.

Part 3

A.8 Part 3 of the illustrative SI sets a prohibition on establishing SSPEs in jurisdictions which are considered high-risk or non-cooperative by the Financial Action Task Force, or those which have not signed an agreement with the UK to ensure an effective exchange of information on tax matters. This is restated from article 4 of the Sec Reg because HM Treasury considers it is an important requirement to maintain.

A.9 It is not appropriate to delegate this requirement to the FCA and the PRA, as they are not primarily concerned with international tax cooperation as part of their statutory objectives. Therefore, HM Treasury considers it is more appropriate for this to be provided in legislation, as a specific exception from the general FRF model of delegating responsibility for firm-facing requirements to the regulators.

Part 4

A.10 Part 4 of the illustrative SI restates the regime for STS equivalent non-UK securitisations, as introduced in Schedule 2, Part 3 of the FSM Bill. This confers on HM Treasury a power to designate a jurisdiction in relation to specified securitisations. This power can only be exercised if HM Treasury is satisfied that law and practice for these securitisations in that jurisdiction has equivalent effect to applicable UK law.

A.11 This regime is restated with minor modifications, including an amendment to reflect the fact that retained EU law will be repealed. Currently, paragraph 33 of Schedule 2 to the Bill defines 'applicable UK law' as the Sec Reg and the Securitisation Regulations 2018. This is modified in the illustrative SI to reflect the fact that this legislation will be repealed. HM Treasury intends to maintain an appropriate test

which must be met in order for it to designate other jurisdictions in relation to STS securitisations.

Part 5

A.12 Part 5 restates due diligence requirements for one kind of institutional investor – OPS – when they invest in a securitisation. These requirements are currently in article 5 of the Sec Reg (although article 5 currently applies to all institutional investors). This is so that TPR (which supervises OPS but which has no rulemaking powers in respect of them) can continue to supervise OPS' compliance with the due diligence requirements.

A.13 Other institutional investors will be subject to due diligence requirements set out in FCA and PRA rules. To clearly set the relevant perimeter in legislation, Part 5 also imposes an obligation on the FCA and the PRA to make rules imposing due diligence requirements on institutional investors.

Part 6

A.14 Part 6 of the illustrative SI sets out the registration regime for Securitisation Repositories (SRs), which is currently in articles 10 to 15 of the Sec Reg. HM Treasury considers the framework for SRs to be appropriate, including that they continue to be subject to registration.

A.15 This Part also restates obligations on the FCA related to the timely assessment and examination of applications for registration and circumstances in which an SR's registration may be withdrawn. It also provides some enforcement powers for the FCA in relation to SRs. Additional enforcement powers, as outlined in the note in the Schedule, will ensure it has powers to effectively provide for the registration and supervision of SRs.

Part 7

A.16 Part 7 of the illustrative SI contains a definition of 'STS securitisation' and other relevant definitions, such as 'STS criteria'. The Sec Reg does not currently contain the defined term 'STS securitisation.' Instead, it provides for securitisations to be designated as STS if they meet requirements in articles 18, 27, and 19 to 22 or 23 to 26, which won't work following the repeal of the Sec Reg.

A.17 Part 7 also sets out a firm-facing requirement for STS securitisations: for the originator and sponsor (or, for ABCP securitisations, just the sponsor) to be established in the UK. This is because HM Treasury considers that requirements related to locations should be set in legislation, as international matters are within the

government's remit. The temporary recognition of EU STS securitisations issued before 31 December 2024[16] will be preserved.

A.18 Finally, Part 7 sets obligations on the FCA and the PRA, including for the FCA to publish and maintain a list of STS securitisations on its official website. This is restated from article 27 of the Sec Reg because HM Treasury considers it should be maintained.

Part 8

A.19 Part 8 of the illustrative SI sets out the authorisation regime for Third Party Verifiers (TPVs), which is now contained in article 28 of the Sec Reg. That is because HM Treasury considers the current system of voluntary use of services provided by TPVs to be appropriate, including the requirement for TPVs to be authorised by the FCA. Part 8 and the Schedule to the SI also include indicative enforcement provisions for the FCA in relation to TPVs, which restate those that are now contained in the Securitisation Regulations 2018. These ensure the FCA has powers to provide effectively for the authorisation and supervision of TPVs.

Part 9

A.20 Part 9 of the illustrative SI specifies designated activities related to securitisation. The scope of the activity of securitisation is maintained by the restatement of the definitions of securitisation, originator, sponsor, original lender, SSPE, and securitisation position from the Sec Reg. Specifying these as designated activities sets the scope of the parties to whom the requirements apply: it means that all firms, authorised or unauthorised, who carry on these activities will be subject to requirements. HM Treasury considers this is appropriate to the risk that engaging in any of these activities brings.

A.21 Part 9 provides the FCA with rulemaking powers for the designated activities. This is because the FCA's general rulemaking powers currently do not extend to unauthorised persons or PRA-authorised persons. Part 9 also scopes out PRA-authorised persons from these rulemaking powers in certain areas. This list of matters describes requirements set out in articles 5(2), 6, 7, 8, and 9 of the Sec Reg. It is intended to preserve the general regulatory responsibilities that currently apply in the Sec Reg. The FCA will retain its responsibility to supervise (and now make rules for) all firms for STS requirements (currently in articles 18 to 27 of the Sec Reg) and selling securitisation positions to retail clients (currently in article 3). It will also retain responsibility for all firms, other than PRA-authorised firms, in relation to other requirements (currently in articles 6 to 9).

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[16] As effected by The Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2022 and The Financial Services (Miscellaneous Amendments) Regulations 2022.

Part 10

A.22 Part 10 of the illustrative SI will provide the FCA with a narrow rulemaking power for small registered UK AIFMs. As currently in the Sec Reg, small registered UK AIFMs are included in the definition of institutional investors in part 1 of this illustrative SI. However, as they are registered with the FCA and are not authorised firms, the FCA does not have rulemaking powers for them. This rulemaking power is therefore needed to ensure that the FCA can make due diligence rules for small registered UK AIFMs.

Part 11

A.23 Part 11 requires the FCA and the PRA to have regard to the coherence of the overall framework for the regulation of securitisation. It is intended that this requirement applies when they make rules under their general rulemaking powers which relate to securitisation, as well as when the FCA makes rules under its DAR powers in part 9 and the small registered UK AIFM power in part 10.

Part 12

A.24 Part 12 includes consequential amendments to legislation which is currently amended by articles 40 and 42 of the Sec Reg. Further consequential amendments to this legislation, and to other pieces of legislation, will be addressed more widely in the final SI that is laid before Parliament.

Schedule

A.25 The Schedule contains a note explaining HM Treasury's indicative approach to supervision and enforcement powers of the FCA and the PRA. The powers would either be set out in full in this SI or FSMA would be applied with modifications. The Schedule currently includes an indicative overview of what would be required for Parts 6, 8, 9, and 10 of the illustrative SI.

Matters not addressed in the illustrative SI

A.26 The illustrative SI and schedule do not include provisions which deal with issues arising from any line-by-line analysis of the Securitisation Regulations 2018 (which implemented the Sec Reg in the UK). These 2018 regulations currently include enforcement provisions for the FCA and the PRA. Those will be addressed in the SI that will be laid before Parliament. Transitional provisions, now contained in article 43 of the Sec Reg, will also need to be considered and addressed.

A.27 Commencement regulations, which commence the revocation of the Sec Reg and the Securitisation Regulations 2018, including any temporary savings provisions that may be needed, will also be required.

HM Treasury contacts

This document can be downloaded from www.gov.uk

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