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COMMISSION

Brussels, 13.3.2014
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COMMISSION DELEGATED REGULATION (EU) No …/..

of 13.3.2014

supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council by way of regulatory technical standards specifying the requirements for investor, sponsor, original lenders and originator institutions relating to exposures to transferred credit risk

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 410(2) of Regulation (EU) No 575/2013 ('the Regulation') empowers the Commission to adopt, following submission of draft standards by the European Banking Authority (EBA), and in accordance with Article 10 of Regulation No (EU) 1093/2010, delegated acts specifying in greater detail the requirements applying to institutions becoming exposed to the risk of a securitisation, including the retention requirements and the due diligence requirements related to Articles 405 and Article 406 and the requirements applying to sponsors and originator institutions related to Article 408 and Article 409 of the Regulation.

The provisions in this delegated act address the fundamental problem of the possible misalignment of interests and incentives in securitisation transactions between the investors, on the one hand, and the originator, sponsor or original lender, on the other. Diverging interests among the parties of a financial contract can lead to moral hazard behaviour when certain information on relevant features of the contract is only available and accessible to one party but not to other parties (i.e. the contract is characterised by an asymmetry of information). Moral hazard behaviour occurs when the party that has more or better information takes on excessive risk knowing that the other party in the transaction will bear the costs of those risks without being equally informed about those risks.

In accordance with Articles 10 to 15 of Regulation No (EU) 1095/2010 establishing the EBA, the Commission shall decide within three months of receipt of the draft standards whether to endorse the drafts submitted. The Commission may also endorse the draft standards in part only, or with amendments, where the Union's interests so require, having regard to the specific procedure laid down in those Articles.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In accordance with the third subparagraph of Article 10(1) of Regulation No (EU) 1093/2010, the EBA has carried out a public consultation on the draft technical standards submitted to the Commission in accordance with Article 410(2) of Regulation No (EU) 575/2013. A consultation paper was published on 22 May 2013, and the consultation closed on 22 August 2013. Moreover, the EBA invited the EBA's Banking Stakeholder Group set up in accordance with Article 37 of Regulation No (EU) 1093/2010 to provide advice on the consultation paper.

As specifically requested by the Commission, only the draft technical standard and explanatory memorandum are submitted to the Commission for the adoption of the RTS. All relevant background information –notably the background and rationale of the draft technical standards, the impact assessment and the feedback on the public consultation- is included in the full version of the EBA RTS, which was approved by the EBA's Board of Supervisors on [11] December 2013 and published on the EBA's public website.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

All the provisions in this delegated act relate to Articles 405, Article 406, Article 408 and Article 409 of Regulation No (EU) 575/2013 which establish requirements on both investor institutions and sponsor or originator institutions engaging in securitisation transactions. An institution becoming exposed to the credit risk of a securitisation will ensure that the originator, sponsor or original lender retains a material net economic interest in the securitisation transaction, according to specific criteria, and should apply due diligence before entering the transaction and thereafter.

Sponsor and originator institutions will apply the same sound credit-granting criteria to the loans they intend to securitise as they do to loans not to be securitised and will disclose to investors all relevant information on the retention of net economic interest in the transaction as well as on the risk characteristics of the securitised exposures. Additional risk-weights are established for those institutions assuming exposure to a securitisation that do not comply with the mentioned requirements and for originators, sponsors or original lenders that do not comply with their disclosure requirements.

The draft regulatory technical standards have been drafted in such a way to ensure the alignment of interest (risks) and information between the securitisation sponsors, originators and original lenders and the investors buying the securitisation transactions, to facilitate the implementation of the 5% retention requirements and disclosure requirements by the sponsor, originator or original lender and the due diligence requirements before investing in securitisation by the investors and to prevent regulatory arbitrage opportunities within and across EU jurisdictions.

Points (a) to (e) of Article 405(1) of Regulation (EU) No 575/2013 lay down various options pursuant to the 5% required retention of interest may be fulfilled. This draft technical standards builds on those options, clarifying different ways of complying with each of those options, without prejudice of other ways which may be proved to be equivalent to any of these, thereby enhancing legal clarity and reducing risk of non-compliance with the Regulation (EU) No 575/2013.

In order to ensure a consistent application of the due diligence obligations under Article 406 of Regulation (EU) No 575/2013, these draft technical standards specify how frequently institutions should review their compliance with such due diligence requirements, how financial models developed by third parties may be used, how to assess whether the use of different policies and procedures for the trading book and non-trading book is appropriate, how to assess compliance when the positions pertain to the correlation trading portfolio and clarifyies certain terms, such as “risk characteristics” and “structural features”.

In order to ensure a consistent application of the disclosure requirments under Article 409 of Regulation (EU) No 575/2013, these draft technical standards specify the requirments on initial and ongoing disclosure to investors on the level of the retention commitment and of all materially relevant data, including on the credit quality and performance of the underlying exposure, which are necessary for effective due diligence on the securitisation positions. Disclosed data should include details of the identity of the retainer, the retention option chosen and the original and ongoing commitment to retain an economic interest.

By ensuring more aligned interests (through the retention requirements, the criteria for credit granting) and by increasing transparency and availability of information (disclosure and due diligence requirements) Articles 405, Article 406, Article 408 and Article 409 of Regulation No (EU) 575/2013 aim at restoring confidence in securitisation markets and contribute to the realisation of the general regulatory objective of enhanced financial stability.

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012[1], and in particular Article 410(2) thereof,

Whereas:

(1) The retention of an economic interest aims at aligning interests between the parties respectively transferring and assuming the credit risk of the securitised exposures. Where an entity securitises its own liabilities, alignment of interests is established automatically, regardless of whether the final debtor collateralises its debt. Where it is clear that the credit risk remains with the originator the retention of interest by the originator is unnecessary and would not improve on the pre-existing position.

(2) It is appropriate to clarify when exposure to transferred credit risk is deemed to occur in relation to certain specific instances in which institutions, other than when acting as originator, sponsor or original lender, may become exposed to the credit risk of a securitisation position, including when institutions act as a counterparty to a derivative instrument with the securitisation transaction, as a hedge counterparty with the securitisation transaction, as a liquidity facility provider to the transaction and when institutions hold securitisation positions in the trading book in the context of market making activities.

(3) In re-securitisation transactions credit risk transfer occurs at the level of the first securitisation of assets and at the second 'repackaged' level of the transaction. The two levels of the transaction, and the two corresponding instances of credit risk transfer, are independent with respect to the requirements set out in this Regulation. Retention of net economic interest and due diligence should be ensured at each level of the transaction by the institutions that become exposed to transferred credit risk at that particular level. Therefore if an institution becomes exposed only to the second 'repackaged' level of the transaction, the requirements relating to retention of net economic interest and due diligence only apply to that institution in relation to the second level of the transaction. Within the same re-securitisation transaction, those institutions who became exposed to the first level of securitisation of assets should

[1] OJ L 176, 27.6.2013, p. 1

comply with the retention and due diligence requirements in relation to the first level of securitisation in the transaction.

(4) It is appropriate to specify in greater detail the application of the retention commitment including compliance when there are multiple originators, sponsors or original lenders, details regarding the different retention options, how to measure the retention requirement at origination and on an on-going basis, and how to apply the exemptions.

(5) Points (a) to (e) of Article 405(1) of Regulation (EU) No 575/2013 lay down various options pursuant to which the required retention of interest may be fulfilled. This Regulation, clarifies in detail the ways to comply with each of those options.

(6) The retention of an interest could be achieved through a synthetic or contingent form of retention, provided that such methods fully comply with one of the options laid down in points (a) to (e) of Article 405(1) of Regulation (EU) No 575/2013, to which the synthetic or contingent form of retention can be equated, and provided that compliance with the disclosure requirements is ensured.

(7) Hedging of or selling the retained interest is prohibited where those techniques undermine the purpose of the retention requirement, implying that they can be permitted where they do not hedge the retainer against the credit risk of either the retained securitisation positions or the retained exposures.

(8) In order to ensure the ongoing maintenance of the net economic interest, institutions should ensure that there is not any embedded mechanism in the securitisation structure by which the minimum retention requirement at origination would necessarily decline faster than the interest transferred. Similarly, the retained interest should not be prioritised in terms of cash flows to preferentially benefit from being repaid or amortised such that it would fall below 5% of the ongoing nominal value of the tranches sold or exposures securitised. Moreover, the credit support provided to the institution assuming exposure to a securitisation position should not decline disproportionately relative to the rate of repayment on the underlying exposures.

(9) Institutions should be able to make use of financial models developed by third parties, other than ECAIs, in order to reduce administrative burden and compliance costs for the fulfilment of due diligence obligations. Institutions should only use third party financial models where they have taken due care, prior to investing, to validate the relevant assumptions in, and structuring of, the models and to understand the methodology, assumptions and results of such models.

(10) It is essential to further specify how frequently institutions should review their compliance with due diligence requirements, how to assess whether the use of different policies and procedures for the trading book and non-trading book is appropriate, how to assess compliance when the positions pertain to the correlation trading portfolio and to clarify certain terms under Article 406, Regulation (EU) No 575/2013, such as “risk characteristics” and “structural features”.

(11) Pursuant to Article 14(2) of Regulation (EU) No 575/2013, entities established in third countries which are included in the consolidation in accordance with Article 18 of Regulation (EU) No 575/2013, but do not directly fall within the scope of application of the additional risk weights, should, in limited circumstances, such as for exposures held in the trading book for the purpose of market-making activities, not be deemed to be in breach of Article 405 of Regulation (EU) No 575/2013. Institutions should not be considered to be in breach of that Article where any such exposures or positions in the trading book are not material and do not form a disproportionate share of the

trading activities, provided that there is a thorough understanding of the exposures or positions, and that formal policies and procedures have been implemented which are appropriate and commensurate with that entity's and the group's overall risk profile.

(12) Initial and ongoing disclosure to investors on the level of the retention commitment and of all materially relevant data, including on the credit quality and performance of the underlying exposure, is necessary for effective due diligence on the securitisation positions. Disclosed data should include details of the identity of the retainer, the retention option chosen and the original and ongoing commitment to retain an economic interest. Where exemptions provided for in art 405 (3) and (4) of Regulation (EU) No 575/2013 are applicable, there should be explicit disclosure of securitised exposures where the retention requirement does not apply and the reason for the disapplication.

(13) This Regulation is based on the draft regulatory technical standards submitted by the European Supervisory Authority (European Banking Authority) to the Commission.

(14) The European Supervisory Authority (European Banking Authority) has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010,

HAS ADOPTED THIS REGULATION:

CHAPTER I

Definitions and exposure to the risk of a securitisation

Article 1

Definitions

For the purposes of this Regulation the following definitions apply:

(a) '*retainer*' means the entity acting as originator, sponsor or original lender which retains a net economic interest in the securitisation in accordance with Article 405(1) of Regulation (EU) No 575/2013.

(b) '*Synthetic form of retention*' means retention of economic interest through the use of derivative instruments.

(c) '*Contingent form of retention*' means retention of economic interest through the use of guarantees, letter of credits and other similar forms of credit support ensuring an immediate enforcement of the retention.

(d) '*Vertical tranche*' means a tranche which exposes the holder of the tranche to the credit risk of each issued tranche of the securitisation transaction on a pro-rata basis.

CHAPTER II

Exposure to the credit risk of a securitisation position

Article 2

Particular cases of exposure to the credit risk of a securitisation position

1. Where an institution acts as a credit derivative counterparty or as a counterparty providing the hedge or as a liquidity facility provider with regard to a securitisation transaction, it shall be deemed to become exposed to the credit risk of a securitisation position when the derivative, the hedge or the liquidity facility assumes the credit risk of the securitised exposures or the securitisation positions.

2. For the purposes of Article 405 and 406 of Regulation (EU) No 575/2013, where a liquidity facility complies with the conditions specified in paragraph 2 of Article 255 of Regulation (EU) No 575/2013, the liquidity provider shall not be deemed to become exposed to the credit risk of a securitisation position.

3. In the context of a re-securitisation with more than one level or a securitisation with multiple discrete underlying transactions, an institution shall be deemed to become exposed to the credit risk only of the individual securitisation position or transaction to which it is assuming exposure.

4. Institutions shall not be deemed to be in breach of Article 405 of Regulation (EU) No 575/2013 in accordance with Article 14(2) of Regulation (EU) No 575/2013 on a consolidated basis provided that the following conditions are met:

   (a) the entity which holds the securitisation positions is established in a third country and is included in the consolidated group in accordance with Article 18 of Regulation (EU) No 575/2013;

   (b) the securitisation positions are held in the trading book of the entity referred to in point a) for the purposes of market making activities;

   (c) the securitisation positions are not material with respect to the overall risk profile of the trading book of the group referred to in point a) and do not form a disproportionate share of the trading activities of the group.

CHAPTER III

Retention of net economic interest

Article 3

Retainers of material net economic interest

1. The retained material net economic interest shall not be split amongst different types of retainer. The requirement to retain a material net economic interest shall be fulfilled in full by any of the following:

   (a) the originator or multiple originators;

   (b) the sponsor or multiple sponsors;

(c) the original lender or multiple original lenders.

2. Where the securitised exposures are created by multiple originators, the retention requirement shall be fulfilled by each originator, in relation to the proportion of the total securitised exposures for which it is the originator.

3. Where the securitised exposures are created by multiple original lenders, the retention requirement shall be fulfilled by each original lender, in relation to the proportion of the total securitised exposures for which it is the original lender.

4. By way of derogation from paragraphs (2) and (3), where the securitised exposures are created by multiple originators or multiple original lenders, the retention requirement may be fulfilled in full by a single originator or original lender provided that either of the following conditions are met:

(a) the originator or original lender has established and is managing the programme or securitisation scheme;

(b) the originator or original lender has established the programme or securitisation scheme and has contributed over 50% of the total securitised exposures.

5. Where the securitised exposures have been sponsored by multiple sponsors, the retention requirement shall be fulfilled by either:

(a) the sponsor whose economic interest is most appropriately aligned with investors as agreed by the multiple sponsors on the basis of objective criteria including the fee structures, the involvement in the establishment and management of the programme or securitisation scheme and exposure to credit risk of the securitisations;

(b) by each sponsor proportionately in relation to the number of sponsors.

Article 4

Fulfilment of the retention requirement through a a synthetic or contingent form of retention

1. The retention requirement may be fulfilled in a manner equivalent to one of the options set out in the second sub-paragraph of Article 405(1) of Regulation (EU) No 575/2013 through a synthetic or contingent form of retention where the following conditions are met:

(a) the amount retained is at least equal to the requirement under the option to which the synthetic or contingent form of retention can be equated;

(b) the retainer has explicitly disclosed that it will retain, on an ongoing basis, a material net economic interest in that manner, including details of the form of retention, the methodology used in its determination and its equivalence to one of those options.

2. Where an entity other than a credit institution as defined in Article 4(1)(1) of Regulation (EU) No 575/2013 acts as a retainer through a synthetic or contingent form of retention, the interest retained on a synthetic or contingent basis shall be

fully collateralised in cash and held on a segregated basis as 'clients' funds as referred to in Article 13(8) of Directive 2004/39/EC[2].

Article 5

Retention option (a): pro rata retention in each of the tranches sold or transferred to investors

1. A retention of no less than 5% of the nominal value of each of the tranches sold or transferred as referred to in point (a) of Article 405(1) of the Regulation (EU) No 575/2013 may also be achieved by the following:

   (a) retention of at least 5% of the nominal value of each of the securitised exposures, provided that the credit risk of such exposures ranks *pari passu* with or is subordinated to the credit risk securitised for the same exposures. In the case of a revolving securitisation, as defined in Article 242(13) of Regulation (EU) No 575/2013, this would occur through retention of the originator's interest assuming the originator's interest was for at least 5% of the nominal value of each of the securitised exposures and ranked *pari passu* with or subordinated to the credit risk that has been securitised with respect to those same exposures;

   (b) the provision, in the context of an ABCP programme, of a liquidity facility which may be senior in the contractual waterfall, where the following conditions are fulfilled:

      (i) the liquidity facility covers 100% of the credit risk of the securitised exposures;

      (ii) the liquidity facility covers the credit risk for as long as the retainer has to retain the economic interest by means of such liquidity facility for the relevant securitisation position;

      (iii) the liquidity facility is provided by the originator, sponsor or original lender in the securitisation transaction;

      (iv) the institution becoming exposed to such securitisation has been given access to appropriate information to enable it to verify that points (i), (ii) and (iii) are complied with.

   (c) Retention of a vertical tranche which has a nominal value of no less than 5% of the total nominal value of all the issued tranches of notes.

Article 6

Retention option (b): retention of the originator's interest for revolving exposures

A retention as referred to in point (b) of Article 405(1) of Regulation (EU) No 575/2013 may be achieved by retaining at least 5% of the nominal value of each of the securitised exposures,

[2] Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

provided that the retained credit risk of such exposures ranks pari passu with or is subordinated to the credit risk securitised for the same exposures.

Article 7

Retention option (c): retention of randomly selected exposures

1. The pool of at least 100 potentially securitised exposures from which retained and securitised exposures are randomly selected, referred to in point (c) of the second sub-paragraph of Article 405(1) of Regulation (EU) No 575/2013, shall be sufficiently diverse to avoid the excessive concentration of the retained interest. When preparing for the selection process, the retainer shall take appropriate quantitative and qualitative factors into account in order to ensure that the distinction between retained and securitised exposures is genuinely random. The retainer of randomly selected exposures shall take into consideration, where appropriate, factors such as vintage, product, geography, origination date, maturity date, loan to value ratio, property type, industry sector, and outstanding loan balance when selecting exposures.

2. The retainer shall not designate different individual exposures as retained exposures at different points in time, unless this is necessary to fulfil the retention requirement in relation to a securitisation in which the securitised exposures fluctuate over time, either due to new exposures being added to the securitisation or to changes in the level of the individual securitised exposures.

Article 8

Retention option (d): retention of the first loss tranche

1. The retention of the first loss tranche in accordance with point (d) of the second sub-paragraph of Article 405(1) of Regulation (EU) No 575/2013 shall be fulfilled by either on-balance sheet or off-balance sheet positions and may also be fulfilled by any of the following:

   (a) provision of a contingent form of retention as referred to in Article 1(1)(c) or of a liquidity facility in the context of an ABCP programme, which fulfils the following criteria:

      (i) it covers at least 5% of the nominal value of the securitised exposures;

      (ii) it constitutes a first loss position in relation to the securitisation;

      (iii) it covers the credit risk for the entire duration of the retention commitment;

      (iv) it is provided by the originator, sponsor or original lender in the securitisation;

      (v) the institution becoming exposed to such securitisation has been given access to appropriate information to enable it to verify that points (i), (ii), (iii) and (iv) are complied with.

(b) overcollateralisation, as a form of credit enhancement, if that overcollateralisation acts as a 'first loss' retention of no less than 5% of the nominal value of the tranches issued by the securitisation.

2. Where the first loss tranche exceeds 5% of the nominal value of the securitised exposures, it shall be possible for the retainer to only retain a portion of such first loss tranche, where this portion is equivalent to at least 5% of the nominal value of the securitised exposures.

3. For the fulfilment of the risk retention requirement at a securitisation scheme level institutions shall not take into account the existence of underlying transactions in which the originators or original lenders retain a first loss exposure at the transaction-specific level.

Article 9

Retention option (e): retention of a first loss in every securitised exposure

1. The retention of a first loss exposure at the level of every securitised exposure in accordance with point (e) of the second sub-paragraph of Article 405(1) shall be applied so that the credit risk retained is always subordinated to the credit risk that has been securitised in relation to those same exposures.

2. The retention referred to in paragraph 1 may be fulfilled by the sale at a discounted value of the underlying exposures by the originator or original lender, where the amount of the discount is not less than 5% of the nominal value of each exposure and where the discounted sale amount is only refundable to the originator or original lender where it is not absorbed by losses related to the credit risk associated to the securitised exposures.

Article 10

Measurement of the level of retention

1. Where measuring the level of retention of net economic interest, the following criteria shall be applied:

(a) origination shall be considered as the time at which the exposures were first securitised;

(b) the calculation of the level of retention shall be based on nominal values and the acquisition price of assets shall not be taken into account;

(c) 'excess spread' as defined in Article 242(1) of Regulation (EU) No 575/2013 shall not be taken into account when measuring the retainer's net economic interest;

(d) The same retention option and methodology shall be used to calculate the net economic interest during the life of a securitisation transaction, unless exceptional circumstances require a change and that change is not used as a means to reduce the amount of retained interest;

2. In addition to the criteria set out in paragraph 1, provided that there is no embedded mechanism by which the retained interest at origination would decline faster than the interest transferred, the fulfillment of the retention requirement shall not be deemed

to have been affected by the amortisation of the retention via cash flow allocation or through the allocation of losses, which, in effect, reduce the level of retention over time. A retainer shall not be required to constantly replenish or readjust its retained interest to at least 5% as losses are realised on its exposures or allocated to its retained position.

Article 11

Measurement of retention for the undrawn amounts in exposures in the form of credit facilities

The calculation of the net economic interest to be retained for credit facilities, including credit cards, shall be based only on amounts already drawn, realised or received and shall be adjusted in accordance with changes to those amounts.

Article 12

Prohibition of hedging or selling the retained interest

1. The obligation in the third sub-paragraph of Article 405(1) of Regulation (EU) No 575/2013 not to subject the retained net economic interest to any credit risk mitigation, short positions, other hedge or sale shall be applied having regard to the purpose of the retention requirement and taking account of the economic substance of the transaction. Hedges of the net economic interest shall not be considered to be a hedge for the purposes of the third sub-paragraph of Article 405(1) of Regulation (EU) No 575/2013 and may accordingly be permitted only where they do not hedge the retainer against the credit risk of either the retained securitisation positions or the retained exposures.

2. The retainer may use any retained exposures or securitisation positions as collateral for secured funding purposes, as long as such use does not transfer the credit risk of these retained exposures or securitisation positions to a third party.

Article 13

Exemptions to Article 405(1) of Regulation (EU) No 575/2013

The transactions referred to in Article 405(4) of Regulation (EU) No 575/2013 shall include securitisation positions in the correlation trading portfolio which are reference instruments satisfying the criterion in Article 338(1)(b) of Regulation (EU) No 575/2013 or are eligible for inclusion in the correlation trading portfolio.

Article 14

Retention on a consolidated basis

An institution satisfying the retention requirement on the basis of the consolidated situation of the related EU parent credit institution, EU financial holding company, or EU mixed financial holding company in accordance with Article 405(2) of Regulation (EU) No 575/2013 shall, in the case the retainer is no longer included in the scope of supervision on a consolidated basis, ensure that one or more of the remaining entities included in the scope of

supervision on a consolidated basis assumes exposure to the securitisation so as to ensure ongoing fulfilment of the requirement.

CHAPTER IV

Due diligence requirements for institutions becoming exposed to a securitisation position

Article 15

Outsourcing and other general considerations

1. Where there is no available information on the specific exposures to be securitised, including where exposures accumulate before their securitisation or whether they may be substituted into an existing revolving securitisation, an institution is deemed to fulfil its due diligence obligations referred to in Article 406 of Regulation (EU) No 575/2013, for each of its individual securitisation positions on the basis of the relevant eligibility criteria for such exposures.

2. When outsourcing certain tasks of the process for the fulfilment of the obligations set out in Article 406 of Regulation (EU) No 575/2013, including record keeping, institutions becoming exposed to the risks of a securitisation shall retain full control of that process.

Article 16

Specification of risk characteristics and structural features

1. The risk characteristics of the individual securitisation position referred to in Article 406(1)(b) of Regulation (EU) No 575/2013 shall include the following most appropriate and material characteristics, such as:

   (a) tranche seniority level;

   (b) cash flow profile;

   (c) any existing rating;

   (d) historical performance of similar tranches;

   (e) obligations related to the tranches included in the documentation relating to the securitisation;

   (f) credit enhancement.

2. The risk characteristics of the exposures underlying the securitisation position referred to in Article 406(1)(c) of Regulation (EU) No 575/2013 shall include the most appropriate and material characteristics, including the performance information referred to in Article 406(2) of Regulation (EU) No 575/2013 in relation to residential mortgage exposures. Institutions shall identify appropriate and comparable metrics for analysing the risk characteristics of other asset classes.

3. Additional structural features as referred to in Article 406(1)(g) of Regulation (EU) No 575/2013 shall include derivative instruments, guarantees, letter of credits and other similar forms of credit support.

Article 17

Frequency of review

Institutions shall review their compliance with Article 406 of Regulation (EU) No 575/2013 after becoming exposed to a securitisation positions at least annually and more frequently, as soon as institutions become aware of a breach of the obligations included in the documentation relating to the securitisation or of a material change in any of the following:

(a) structural features that can materially impact on the performance of the securitisation position;

(b) the risk characteristics of the securitisation positions and of the underlying exposures.

Article 18

Stress Tests

1. The stress tests referred to in the second sub-paragraph of Article 406(1) of Regulation (EU) No 575/2013, shall include all relevant securitisation positions and shall be incorporated into the stress testing strategies and processes that the institutions carry out in accordance with the internal capital adequacy assessment process specified in Article 73 of the Directive 2013/36/EU [3].

2. In order to fulfil the stress testing requirements referred to in the second sub-paragraph of Article 406(1) of Regulation (EU) No 575/2013, institutions may make use of comparable financial models developed by third parties, in addition to those developed by ECAIs, provided that they can demonstrate, when requested that they took due care, prior to investing to validate the relevant assumptions in and structuring of the models and to understand methodology, assumptions and results.

3. When conducting the stress tests referred to in Article 406(1) of Regulation (EU) No 575/2013 within an ABCP programme as referred to in Article 242(9) of Regulation (EU) No 575/2013, which is supported by a liquidity facility which fully covers the credit risk of the securitised exposures, institutions may carry out a stress test on the creditworthiness of the liquidity facility provider rather than on the securitised exposures.

Article 19

Exposures in the trading book and non-trading book

1. The holding of a securitisation position in the trading or non-trading book respectively shall not represent a sufficient justification in itself for the application of different policies and procedures or a different intensity of review to fulfil the due diligence obligations referred to in Article 406 of Regulation (EU) No 575/2013. In determining whether different policies and procedures or a different intensity of

[3] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

review shall be applied, all relevant factors materially impacting the risk profile of each of the books and of the relevant securitisation positions shall be considered, including the size of the positions, the impact on the institution's capital base during a period of stress, and the concentration of risk in one specific transaction, issuer, or asset class.

2. Institutions shall ensure that any material change increasing the risk profile of the securitisation positions in their trading book and non-trading book is reflected by an appropriate change in their due diligence procedures as regards those securitisation positions. In this regard, institutions shall identify in their formal trading book and non-trading book policies and procedures the circumstances which would trigger a review of the due diligence obligations.

Article 20

Positions in the correlation trading portfolio

Article 406 of the Regulation (EU) No 575/2013 shall be deemed to be complied with where the following conditions are fulfilled:

(a) securitisation positions are either held in the correlation trading portfolio and are reference instruments as referred to in Article 338(1)(b) of that Regulation or are eligible for inclusion in the correlation trading portfolio;

(b) the institution complies with Article 377 of that Regulation with regard to calculating the own funds requirements in relation to its correlation trading portfolio;

(c) the institution's approach to calculating own funds in relation to its trading portfolio results in a comprehensive and thorough understanding of the risk profile of its investment in the securitisation positions;

(d) the institution has implemented formal policies and procedures appropriate to its correlation trading portfolio and commensurate with the risk profile of its investments in the corresponding securitised positions, for analysing and recording the relevant information referred to in Article 406 (1) of Regulation (EU) No 575/2013.

CHAPTER V

Requirements for originators, sponsors and original lenders

Article 21

Policies for credit granting

1. The fulfilment of the obligation referred to in Article 408 of Regulation (EU) No 575/2013 by originator or sponsor institutions shall not imply that borrower types and loan products must be the same for securitised and non-securitised exposures.

2. Where sponsor and originator institutions have not been engaged in the original credit-granting of exposures to be securitised, or are not active in the credit-granting of the specific types of exposures to be securitised, those institutions shall obtain all the necessary information to assess whether the criteria applied in the credit-granting

for those exposures are as sound and well-defined as the criteria applied to non-securitised exposures.

Article 22

Disclosure of the level of the commitment to maintain a net economic interest

1. The retainer shall, pursuant to Article 409 of Regulation (EU) No 575/2013, disclose to investors at least the following information regarding the level of its commitment to maintain a net economic interest in the securitisation:

   (a) confirmation of the retainer's identity and of whether it retains as originator, sponsor or original lender;

   (b) whether the modalities provided for in points (a), (b), (c), (d) or (e) of the second sub-paragraph of Article 405(1) of Regulation (EU) No 575/2013 has been applied to retain a net economic interest;

   (c) any change to the modality to retain a net economic interest as referred to in point (b) in accordance with Article 10(1)(d);

   (d) confirmation of the level of retention at origination and of the commitment to retain on an on-going basis, which shall relate only to the continuation of fulfilment of the original obligation and shall not require data on the current nominal or market value, or on any impairments or write-downs on the retained interest.

2. Where the exemptions referred to in paragraphs 3 or 4 of Article 405 of Regulation (EU) No 575/2013 apply to a securitisation transaction, institutions acting as originator, sponsor or original lender shall disclose information on the applicable exemption to investors.

3. The disclosure referred to in paragraph 1 and 2 shall be appropriately documented and made publicly available, except in bilateral or private transactions where private disclosure is considered by the parties to be sufficient. The inclusion of a statement on the retention commitment in the prospectus for the securities issued under the securitisation programme shall be considered an appropriate means of fulfilling the requirement.

4. The disclosure shall also be confirmed after origination with the same regularity as the reporting frequency of the transaction, at least annually and in any of the following circumstances:

   (a) where a breach of the retention commitment referred to in Article 405(1) of Regulation (EU) No 575/2013 occurs;

   (b) where the performance of the securitisation position or the risk characteristics of the securitisation or of the underlying exposures materially change;

   (c) following a breach of the obligations included in the documentation relating to the securitisation.

Article 23

Disclosure of materially relevant data

1. Originators, sponsors and original lenders shall ensure that materially relevant data under Article 409 of Regulation (EU) No 575/2013 is readily accessible to investors, without excessive administrative burden.

2. The appropriate disclosure referred to in Article 409 of Regulation (EU) No 575/2013 shall be done at least annually and in the following circumstances:

   (a) where the performance of the securitisation position or the risk characteristics of the securitisation or of the underlying exposures materially change;

   (b) following a breach of the obligations included in the documentation relating to the securitisation.

   (c) In order for data to be considered to be materially relevant with regard to the individual underlying exposures, it shall, in general, be provided on a loan-by-loan basis, however there are instances where the data may be provided on an aggregate basis. In assessing whether aggregate information is sufficient, factors to be taken into account shall include the granularity of the underlying pool and whether the management of the exposures in that pool is based on the pool itself or on a loan-by-loan basis.

3. The disclosure requirement shall be subject to any other legal or regulatory requirements applicable to the retainer.

CHAPTER VI

Final provisions

Article 24

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in *the Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 13.3.2014

For the Commission
The President
José Manuel BARROSO