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.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2023 No.

FINANCIAL SERVICES AND MARKETS

The Securitisation Regulations 2023

Made - - - - ***

Coming into force in accordance with regulation 2

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The Treasury make the following Regulations in exercise of the powers conferred by sections 3RE, 71K, 71N, 71O, 71Q, 138EA and 428(3) of the Financial Services and Markets Act 2000 and sections 4, 76(2) and 78(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 and extent

1.—(1) These Regulations may be cited as the Securitisation Regulations 2023.

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

Commencement

2.—(1) The following provisions come into force on [*the day after that on which these Regulations are made*] ("the initial commencement day")—

(a) this Part,

(b) Part 2 (designated activities),

(c) regulation 8 (matters to which FCA and PRA must have regard when making rules relating to securitisations),

(d) regulation 14 (designation of country or territory in relation to securitisations), for the purpose only of enabling the Treasury to make regulations, and

(e) the remaining provisions, for the purposes only of enabling the FCA—

(i) to make rules,

(ii) to give directions or guidance, or

(iii) to issue statements of policy.

(2) So far as not already in force by virtue of paragraph (1), these Regulations come into force on the day on which the revocation of the EU Securitisation Regulation 2017 by section 1(1) of, and Schedule 1 to, the Financial Services and Markets Act 2023 comes into force ("the main commencement day").

Interpretation

3.—(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;

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

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

"credit institution" means an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account;

"designated activity rules" means rules made under section 71N of FSMA 2000;

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

"established in the United Kingdom" means constituted under the law of a part of the United Kingdom—

(a) with a registered office in any part of the United Kingdom, or

(b) if the person does not have a registered office, with a head office in any part of the United Kingdom;

"the EU Securitisation Regulation 2017" means Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisations, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012;

"FSMA 2000" means the Financial Services and Markets Act 2000;

"fully-supported ABCP transaction" has the meaning given in regulation 34;

"initial commencement day" has the meaning given in regulation 2(1);

"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 of the Alternative Investment Fund Managers Regulations 2013)—

  (i) with permission under Part 4A of FSMA 2000 in respect of the activity specified by article 51ZC of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (managing an AIF); and

  (ii) which markets or manages an AIF (as defined in regulation 3 of the 2013 Regulations) in the United Kingdom,

  and for the purposes of sub-paragraph (ii), an AIFM markets an AIF when the AIFM makes a direct or indirect offering or placement of units or shares of an AIF managed by it to or with an investor domiciled or with a registered office in the United Kingdom or Gibraltar, or when another person makes such an offering or placement at the initiative of, or on behalf of, the AIFM;

(f) a small registered UK AIFM as defined in regulation 2(1) of the Alternative Investment Fund Managers Regulations 2013;

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

(h) 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;

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

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

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

"investor" means a person holding a securitisation position;

"main commencement day" has the meaning given in regulation 2(2);

"occupational pension scheme" means an occupational pension scheme as defined 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;

"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 body corporate that centrally collects and maintains the records of securitisations;

"securitisation special purpose entity" or "SSPE" 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;

"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—

(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 or territory in which the entity is established;

"STS criteria" has the meaning given in regulation 10(1)(a);

"STS equivalent non-UK securitisation" has the meaning given in regulation 14;

"STS notification" means a notification under regulation 11(1);

"STS securitisation" has the meaning given in regulation 10;

"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 25;

"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;

"working day" means any day other that a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

(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.

PART 2

Designated activities

Activities specified as designated activities for the purposes of FSMA 2000

4.—(1) The following activities are specified under section 71K of FSMA 2000 as designated activities for the purposes of that Act, where those activities are carried out by a person that is established in the United Kingdom—

(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 rules made by the FCA.

FCA rules

5.—(1) The FCA may make designated activity rules relating to the activities specified in regulation 4.

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

(a) due diligence in relation to any securitisation, including monitoring, stress-testing and risk management;

(b) the retention of any interest or risk in any securitisation or the selection of the assets for the securitisation;

(c) the provision of information in relation to any 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 by virtue of paragraph (1) imposing a requirement on a PRA-authorised person.

(5) The FCA may by notice suspend any rules made by virtue of 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 made by virtue of 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)).

Power of FCA to give directions

6.—(1) The FCA may give directions under section 71O of FSMA 2000 imposing on a person or a description of persons such requirements as the FCA considers appropriate in relation to the carrying on of an activity specified in regulation 4.

(2) The FCA may exercise the power conferred by virtue of paragraph (1) only if it appears to the FCA—

(a) in the case of a direction given to a person, that in carrying on the activity the person is failing, or is likely to fail, to comply with a requirement imposed—

(i) by designated activity rules made by virtue of regulation 5,

(ii) by Part 4 (restriction on establishment of SSPE), or

(iii) by Part 5 (simple, transparent and standardised securitisations), or

(b) in the case of a direction given to a person or a description of persons, that it is desirable to exercise the power—

(i) in order to reduce risks, including reputational risks, arising from participation in securitisations or investment in securitisations, or

(ii) in order to advance any of the FCA's operational objectives set out in section 1B(3) of FSMA 2000.

(3) Except as provided by paragraph (4), the power to impose requirements under section 71O of FSMA 2000 by virtue of paragraph (1) includes (among other things) power—

(a) to prohibit a person from selling a securitisation position to retail clients;

(b) to impose requirements with respect to—

(i) due diligence in relation to any securitisation, including monitoring, stress-testing and risk management;

(ii) the retention of any interest or risk in any securitisation or the selection of the assets for the securitisation;

(iii) the provision of information in relation to any securitisation;

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

(v) 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.

(4) The power to impose requirements by virtue of paragraph (1) does not include power to impose requirements on a PRA-authorised person with respect to any of the matters mentioned in paragraph (3)(b).

(5) Paragraph (4) does not apply to the imposition of requirements with respect to STS criteria or STS notifications.

(6) Before giving or varying a direction by virtue of paragraph (1) where the exercise of the power relates to a PRA-authorised person, the FCA must consult the PRA.

Directions: procedure

7.—(1) This regulation applies to an exercise by the FCA of the power to give a direction under section 71O of FSMA 2000 by virtue of regulation 6 unless—

(a) the direction is given to a description of persons, and

(b) the FCA considers it appropriate to publish the direction under subsection (9) of section 71O instead of proceeding under subsection (8) of that section.

(2) If the FCA proposes to give a direction, or gives a direction with immediate effect, the FCA must give written notice to the person concerned ("P").

(3) A direction takes effect—

(a) immediately, if the notice under paragraph (2) states that this 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.

(4) A direction may be expressed to take effect immediately (or on a specified date) only if the FCA reasonably considers that it is necessary for the direction to take effect immediately (or on that date).

(5) The notice under paragraph (2) must—

(a) give details of the direction,

(b) state the FCA's reasons for the direction and for its determination as to when the direction takes effect,

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

(d) inform P of P's right to refer the matter to the Tribunal.

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

(7) If, having considered any representations made by P, the FCA decides—

(a) to give the direction proposed, or

(b) if the direction has been given, not to revoke the direction,

it must give P written notice.

(8) If, having considered any representations made by P, the FCA decides—

(a) not to give the direction proposed,

(b) to give a different direction, or

(c) to revoke a direction which has effect,

it must give P written notice.

(9) A notice under paragraph (7) must inform P of P's right to refer the matter to the Tribunal.

(10) A notice under paragraph (8)(b) must comply with paragraph (5).

(11) If a notice informs P of P's right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(12) For the purposes of paragraph (3)(c), whether a matter is open to review is to be determined in accordance with section 391(8) of FSMA 2000.

(13) A person who is aggrieved by the exercise of the FCA of its powers in relation to a direction relating to the person may refer the matter to the Tribunal.

PART 3

Matters to consider when making rules

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

8.—(1) The coherence of the overall framework for the regulation of securitisation is specified for the purposes of section 138EA of FSMA 2000 (matters to consider when making rules).

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

(a) the power of the FCA to make designated activity rules by virtue of regulation 5,

(b) the power of the FCA to make rules under any provision of these Regulations,

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

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

PART 4

Restrictions on establishment of a securitisation special purpose entity

Restrictions on establishment of a securitisation special purpose entity

9.—(1) The originator and sponsor in relation to a securitisation must ensure that the securitisation is not carried out by means of a securitisation special purpose entity that is established in a country or territory outside the United Kingdom which—

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

(b) has neither signed an agreement with the United Kingdom nor a multilateral agreement to which the United Kingdom is a party—

(i) 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

(ii) to ensure an effective exchange of information on tax matters.

(2) An institutional investor must not invest in a securitisation carried out by means of a securitisation special purpose entity that is established in a country or territory outside the United Kingdom and to which sub-paragraph (a) or (b) of paragraph (1) applies.

PART 5

Simple, transparent and standardised securitisations

STS securitisations

10.—(1) In this Part "STS securitisation" means a securitisation which—

(a) meets such criteria as to simplicity, transparency and standardisation as may be specified for the purposes of this regulation in designated activity rules made by virtue of regulation 5 ("the STS criteria"),

(b) also meets the further condition in paragraph (2), and

(c) is included on the list published by the FCA under regulation 11.

(2) The further condition is—

(a) in the case of a securitisation which is not an ABCP programme or an ABCP transaction, that the originator and sponsor involved in the securitisation are established in the United Kingdom;

(b) in the case of a securitisation which is an ABCP programme, that the sponsor involved in the ABCP programme is established in the United Kingdom;

(c) in the case of a securitisation which is an ABCP transaction, that the sponsor involved in the ABCP programme of which that ABCP transaction forms part is established in the United Kingdom.

STS notification requirements

11.—(1) Where the sponsor or originator of a securitisation notifies the FCA in accordance with designated activity rules made by virtue of regulation 5 that the securitisation falls within regulation 10(1)(a) and (b), 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 and update the list on a regular basis.

(3) The FCA must remove a securitisation from the list if—

(a) the FCA does not consider the securitisation to be an STS securitisation, or

(b) the FCA has been notified by the originator or sponsor that the securitisation is no longer an STS securitisation.

(4) Where the PRA has imposed a sanction on, or taken another measure on the ground that, an originator, sponsor or original lender has failed to comply with a requirement that is imposed in relation to an STS securitisation—

(a) by rules made by the PRA under section 137G of FSMA 2000 relating to—

(i) risk retention requirements,

(ii) transparency requirements, or

(iii) credit-granting requirements, and

(b) is applicable to that person in the person's capacity as originator, sponsor or original lender,

it must notify the FCA of that fact immediately.

(5) Where the FCA imposes a relevant sanction in relation to an STS securitisation, or receives a notification under paragraph (4), it must immediately indicate that fact in relation to the securitisation concerned on the list maintained under paragraph (2).

(6) In paragraph (5),"relevant sanction" means—

(a) any sanction imposed or other measure taken on the ground that an originator, sponsor, original lender or securitisation special purpose entity has failed to comply with—

(i) any applicable rules relating to—

(aa) risk retention requirements,

(bb) transparency requirements,

(cc) credit-granting requirements,

(dd) STS criteria, or

(ee) the notification of a STS securitisation or that a securitisation has ceased to be a STS securitisation,

(ii) this regulation, or

(iii) regulation 13, or

(b) any sanction imposed or other measure taken on the ground that a third party verifier has failed to comply with regulation 26(3),

and in this paragraph, "applicable rules" means designated activity rules made by virtue of regulation 5 if they are applicable to a person in the person's capacity as originator, sponsor, original lender or securitisation special purpose entity.

Tribunal

12. Where the FCA removes a securitisation from the list in regulation 11(2) on the ground in paragraph (3)(a) of that regulation, the originator, sponsor or original lender may refer the matter to the Tribunal.

Use of STS designation

13.—(1) The originator, sponsor or SSPE may use the designation "STS" or "simple, transparent and standardised", or a designation that refers directly or indirectly to those terms for their securitisation, only where the securitisation is—

(a) an STS securitisation as defined in regulation 10, or

(b) a relevant securitisation as defined in paragraph (2).

(2) A "relevant securitisation" is—

(a) a securitisation—

(i) which meets all the requirements of Section 1 or Section 2 of Chapter 4 of the EU Securitisation Regulation 2017,

(ii) of which ESMA was notified pursuant to Article 27(1) of that Regulation before the end of the period of 4 years beginning with IP completion day, and

(iii) which is included in the list referred to in Article 27(5) of that Regulation; or

(b) a STS equivalent non-UK securitisation.

(3) In paragraph (2), any reference to a provision of the EU Securitisation Regulation 2017 is a reference to that provision as it had or has effect in relation to the European Union at any time on or after the date of the notification and before the end of the period referred to in paragraph (2)(a)(ii).

Designation of country or territory in relation to securitisations

14.—(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 applicable UK law.

(3) In determining whether the condition in paragraph (2) is satisfied, the Treasury must have regard to the effect of any law and practice applying in the country or territory to securitisations of the descriptions to be specified with respect to the following in particular—

(a) criteria as to simplicity, transparency and comparability;

(b) the supervision and enforcement framework.

(4) In paragraph (2) "applicable UK law" means any enactment of domestic law as it applies to STS securitisations.

(5) In making regulations under paragraph (1), the Treasury must also 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.

(6) 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—

(a) the law and practice of a country or territory outside the United Kingdom, or particular aspects of such law and practice,

(b) the arrangements mentioned in paragraph (5),

in relation to securitisations of descriptions specified in the request.

(7) If the Treasury request a report under paragraph (6), 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).

(8) Regulations under paragraph (1) may—

(a) specify matters that a person carrying out a due-diligence assessment required by regulations 35 and 36 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.

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

(10) Such regulations may—

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

(b) make different provision for different purposes.

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

(12) In these Regulations, "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 this regulation.

PART 6

Securitisation repositories

Registration of a securitisation repository

15.—(1) A body corporate may apply to the FCA for registration under this regulation as a securitisation repository by means of which originators, sponsors or securitisation special purpose entities make information available in accordance with FCA securitisation rules or PRA securitisation rules.

(2) A trade repository may submit an application for an extension of registration to the FCA with a view to its registration as a securitisation repository.

(3) To be eligible to be registered under this regulation, a body corporate must—

(a) be established in the United Kingdom,

(b) apply procedures to verify the completeness and consistency of the information made available to it under FCA or PRA securitisation rules, and

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

(4) For the purposes of this Part, references in Articles 78 and 80 of EMIR to Article 9 of EMIR must be construed as references to FCA securitisation rules.

(5) For the purposes of this Part and FCA securitisation rules, 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 modification that a reference to EMIR is a reference to this Part.

(6) In this regulation—

"FCA securitisation rules" means—

(a) designated activity rules made by virtue of regulation 5, and

(b) rules made by the FCA under section 137A of FSMA 2000 in relation to securitisation;

"PRA securitisation rules" means rules made by the PRA under section 137G of FSMA 2000 in relation to securitisation;

"trade repository" means a person who centrally collects and maintains records of derivatives and who is registered by the FCA as such under EMIR.

Application for registration

16.—(1) An application for registration or for an extension of registration under regulation 15 must—

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

(b) contain, or be accompanied by such information as the FCA may reasonably require.

(2) On receiving an application for registration or for an extension of registration under regulation 15, the FCA must assess whether the application is complete within the period of 20 working days beginning with the receipt of the application.

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

(4) After having assessed an application as complete, the FCA must notify the applicant accordingly.

Examination of the application

17. The FCA must, within the period of 40 working days beginning with the day on which the notification referred to in regulation 16(4) is made—

(a) examine the application for registration, or for an extension of registration, based on the compliance of the applicant with this Part,

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

(c) give reasons for its decision.

Register of securitisation repositories

18.—(1) The FCA must maintain a register of securitisation repositories in accordance with this Part.

(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.

Changes to conditions for registration

19. A securitisation repository must, without undue delay, notify the FCA of any material changes affecting its eligibility for registration.

Withdrawal of registration

20.—(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.

Notification of decision

21.—(1) On making a decision referred to in regulation 17(b) or 20, the FCA must notify its decision to the applicant or securitisation repository concerned.

(2) A refusal of an application for registration under regulation 17(b) comes into effect on the fifth working day after it is made.

(3) A withdrawal of registration under regulation 20(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 20(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 17(b) or 20 is—

(a) to refuse the application for registration,

(b) to exercise the FCA's power under regulation 20(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 20(3) to withdraw the registration of the securitisation repository,

the FCA must give the applicant or 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 applicant or 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 applicant or 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 applicant or 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 applicant or 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 17(b);

(b) to refuse to revoke a decision made under regulation 20(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 20(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 applicant or 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.

(12) For the purposes of paragraph (3)(c), whether a matter is open to review is to be determined in accordance with section 391(8) of FSMA 2000.

Tribunal

22.—(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 17(b);

(b) exercise its power under regulation 20(1) or (2) to withdraw the registration of a securitisation repository; or

(c) refuse the securitisation repository's application under regulation 20(3) to withdraw its registration.

(2) Where there is a review under regulation 21(7), paragraph (1) applies only in relation to the FCA's decision in response to that review.

Power of FCA to make rules in relation to securitisation repositories

23.—(1) The FCA may make such rules applying to registered securitisation repositories—

(a) with respect to the carrying on by them of securitisation repository activities, or

(b) with respect to the carrying on by them of activities which are not securitisation repository activities,

as appear to the FCA to be necessary or expedient for the purpose of advancing one or more of its operational objectives set out in section 1B(3) of FSMA 2000.

(2) In paragraph (1) "securitisation repository activities" means the activities of centrally collecting and maintaining records of securitisations.

(3) The rules may make provision applying to securitisation repositories even though there is no relationship between the securitisation repositories to whom the rules will apply and the persons whose interests will be protected by the rules.

(4) The rules may contain requirements which take into account, in the case of a securitisation repository which is a member of a group, any activity of another member of the group.

FCA power to impose requirements

24.—(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.

(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.

PART 7

Registration of third party verifying STS compliance

Interpretation of Part 7

25. In this Part—

"third party", in relation to a securitisation, means a person other than the originator, sponsor or securitisation special purpose entity;

"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 registered to provide a third party verification service.

Third party verifying STS compliance

26.—(1) A person may apply to the FCA for registration under this regulation as the provider of a third party verification service.

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

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

(b) the person is neither a regulated entity as defined in regulation 1(2) of the Financial Conglomerates and Other Financial Groups Regulations 2004 nor a credit rating agency as defined in Article 3(1) of Regulation No 1060/2009 of 16 September 2009 on credit rating agencies, and the performance of the person's other activities does not compromise the independence or integrity of its assessment;

(c) the person 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 person have professional qualifications, knowledge and experience that are adequate for the task of the person and they are of good repute and integrity;

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

(f) the person 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 person, its shareholders or members, managers, employees or

any other individuals whose services are placed at the disposal or under the control of the person, and to that end—

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

(3) 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.

Application for registration to provide a third party verification service

27.—(1) An application for registration 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 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 registration to provide a third party verification service

28.—(1) The FCA must determine an application for registration 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 registration takes effect.

Register of third party verifiers

29.—(1) The FCA must maintain a register of third party verifiers in accordance with this Part.

(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.

Temporary withdrawal of registration to provide a third party verification service

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

(a) the third party verifier is materially non-compliant with regulation 26(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 a third party verification service through false statements or other irregular means;

(d) the third party verifier has failed to comply with regulation 26(3); 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 registration 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).

(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 registration, in the way proposed;

(b) not to withdraw temporarily, or revoke or vary the temporary withdrawal of the third party verifier's registration, 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 registration of a third party verifier is temporarily withdrawn, the FCA must as soon as practicable update the register accordingly.

Withdrawal of registration to provide a third party verification service on the initiative of the FCA

32.—(1) The FCA may withdraw a registration 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 26(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 26(3); 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.

Withdrawal of registration 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, withdraw its registration to provide a third party verification service.

(2) A request for withdrawal of a person's registration 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 withdrawal of the registration takes effect, and as soon as practicable update the register referred to in regulation 29 accordingly.

PART 8

Due-diligence requirements

CHAPTER 1

Interpretation of Part 8

Interpretation of Part 8

34. In this Part—

"credits giving rise to underlying exposures" do not include trade receivables not originated in the form of a loan;

"FCA rules" means designated activity rules made by virtue of regulation 5;

"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;

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

"PRA rules" means rules made by the PRA under section 137G of FSMA 2000;

"trustee or manager", in relation to an occupational pension scheme, means—

(a) in relation to a scheme established under a trust, the trustees, and

(b) in relation to any other scheme, the managers.

CHAPTER 2

Occupational pension schemes

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

35.—(1) Subject to paragraph (2), before holding a securitisation position, the trustees or managers of an occupational pension scheme who are not the originator, sponsor or original lender must verify the following matters—

(a) that where the originator or original lender is established in the United Kingdom, and is not a credit institution or an investment firm, the originator or original lender—

(i) 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

(ii) has effective systems in place to apply those criteria and processes in accordance with any applicable FCA and PRA rules relating to credit-granting requirements;

(b) that where the originator or original lender is not established in the United Kingdom, the originator or original lender—

(i) grants all the credits giving rise to underlying exposures on the basis of sound and well-defined criteria and clearly established processes for approving, amending, renewing and financing those credits, and

(ii) has effective systems in place to apply those criteria and processes,

to ensure that credit-granting is based on a thorough assessment of the obligor's creditworthiness;

(c) that where the originator, sponsor or original lender is established in the United Kingdom—

(i) the originator, sponsor or original lender continually retains a material net economic interest in accordance with any applicable FCA or PRA rules relating to risk retention requirements, and

(ii) that risk retention is disclosed to the trustees or managers of the occupational pension scheme in accordance with any applicable FCA or PRA rules relating to transparency requirements;

(d) that where the originator, sponsor or original lender is not established in the United Kingdom—

(i) the originator, sponsor or original lender continually retains a material net economic interest which, in any event, must not be less than 5%, determined in accordance with the FCA or PRA rules relating to risk retention requirements which would be applicable were the originator, sponsor or original lender to be established in the United Kingdom, and

(ii) that risk retention is disclosed to the trustees or managers of the occupational pension scheme;

(e) that the originator, sponsor or securitisation special purpose entity (wherever established) have made available sufficient information to enable the trustees or managers of the occupational pension scheme to assess the risks involved in holding the securitisation position, and have agreed to continue to provide such information on a regular basis, including at least …. [*It is proposed to add a list of minimum information requirements in similar terms to the lists to be included in parallel FCA and PRA rules concerning due diligence requirements for institutional investors other than occupational pension schemes. The list will be updated after the FCA and PRA rules are published*].

(2) In the case of a fully-supported ABCP programme, the sponsor (not the trustees or managers of the occupational pensions scheme) must verify the matters referred to in paragraph (1)(a).

(3) Before holding a securitisation position, the trustees or managers of an occupational pension scheme who are not the originator, sponsor or original lender must carry out a due-diligence assessment which enables them 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) any of the structural features of the securitisation that could 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) with regard to a securitisation notified under regulation 11(1), compliance with the STS criteria;

(d) with regard to an STS equivalent non-UK securitisation, such matters as may be specified in regulations made under regulation 14(1) (and may rely on such matters to such extent as may be specified).

(4) In addition to the matters specified in paragraph (3)(a) and (b), in the case of a fully-supported ABCP programme, the trustees or managers of 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.

(5) In carrying out the due-diligence assessment referred to in paragraph (3)(c), the trustees or managers of the 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 concerning compliance with the STS criteria, without solely or mechanistically relying on that notification or information.

(6) In paragraph (3)(c), the reference to a securitisation notified under regulation 11(1) includes a reference to a securitisation of which ESMA was notified pursuant to Article 27(1) of the EU Securitisation Regulation 2017, by a person established in an EEA State, before the end of the period of 4 years beginning with IP completion day, and for the purposes of this paragraph—

(a) in paragraphs (3)(c) and (5), the reference to the "STS criteria" is a reference to the requirements of Articles 19 to 22 or 23 to 26 of the EU Securitisation Regulation 2017;

(b) in paragraph (5), the reference to the "STS notification" is a reference to the notification pursuant to Article 27(1) of the EU Securitisation Regulation 2017; and

(c) reference to a provision of the EU Securitisation Regulation 2017 is a reference to that provision as it had or has effect in relation to the European Union at any time on or after the date of the notification and before the end of the period of 4 years beginning with IP completion day.

Due-diligence requirements for occupational pension schemes: ongoing requirements

36.—(1) The trustees or managers of an occupational pension scheme who are not the originator, sponsor or original lender holding a securitisation position must at least establish appropriate written procedures that are proportionate to the risk profile of the securitisation position and, where relevant, to the trustees or managers' trading and non-trading book, in order to monitor, on an ongoing basis, compliance with regulation 35 and the performance of the securitisation position and of the underlying exposures.

(2) The written procedures referred to in paragraph (1) must, where relevant to the securitisation and the underlying exposures, include—

(a) monitoring of the exposure type,

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

(c) default rates,

(d) prepayment rates,

(e) loans in foreclosure,

(f) recovery rates,

(g) repurchases,

(h) loan modifications,

(i) payment holidays,

(j) collateral type and occupancy, and

(k) 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.

(3) Where relevant, where the underlying exposures are themselves securitisation positions in accordance with applicable FCA or PRA rules concerning re-securitisation, the trustees or managers must also monitor the exposures underlying those positions.

(4) The trustees or managers of an occupational pension scheme who are not the originator, sponsor or original lender holding a securitisation position must at least—

(a) 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;

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

(c) 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;

(d) 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 35 and of any other relevant information; and

(e) 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 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

37. Where the trustees or managers of an occupational pension scheme who are not the originator, sponsor or original lender have given another institutional investor authority to make investment management decisions that might expose the trustees or managers to a securitisation—

(a) the trustees or managers may instruct that managing party to fulfil their obligations under regulations 35 and 36 in respect of any exposure to a securitisation arising from those decisions; and

(b) where an institutional investor who has been given authority to make investment management decisions under this regulation is instructed under paragraph (a) to fulfil the obligations of the trustees or managers and fails to do so, any sanction imposed as a result of the failure must be imposed on the managing party and not on the trustees or managers of the occupational pension scheme which is exposed to the securitisation.

CHAPTER 3

Other institutional investors' due-diligence requirements

Rules in relation to other institutional investors' due-diligence requirements

38.—(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.

CHAPTER 4

Small registered UK AIFMs

Due-diligence requirements of small registered UK AIFMs as institutional investors

39.—(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.

(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) For the purposes of the provisions of the Alternative Investment Fund Managers Regulations 2013 listed in paragraph (6), rules made by the FCA under paragraph (1) are to be taken to be implementing provisions as defined by regulation 2 of those Regulations.

(6) 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).

(7) In the provisions of FSMA 2000 listed in paragraph (8), 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).

(8) 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).

PART 9

Monitoring, disciplinary measures and procedures

Interpretation of Part 9

40. In this Part—

"regulated person" means a person who is not an authorised person and is—

(a) an original lender,

(b) an originator,

(c) a person engaged in the activity specified in regulation 4(1)(b),

(d) a sponsor,

(e) an SSPE,

(f) a third party verifier, or

(g) a securitisation repository;

"a regulator" means the FCA or the PRA;

"relevant requirement" means a requirement imposed—

(a) by designated activity rules made by virtue of regulation 5,

(b) by a direction under section 71O of FSMA 2000 given by virtue of regulation 6,

(c) by Part 4 (restriction on establishment of securitisation special purpose entity),

(d) by or under Part 5 (simple, transparent and standardised securitisations), Part 6 (securitisation repositories) or Part 7 (registration of third party verifying STS compliance),

(e) by regulation 44 in a case where the temporary prohibition was imposed by the FCA, or

(f) by the FCA under any other provision of these Regulations or under a provision of FSMA 2000 applied by these Regulations.

Monitoring and enforcement by FCA

41.—(1) The FCA must maintain arrangements designed to enable it to determine whether regulated persons are complying with relevant requirements.

(2) The FCA must also maintain arrangements for enforcing compliance by regulated persons with relevant requirements.

Monitoring and enforcement by Pensions Regulator

42.—(1) The Pensions Regulator must maintain arrangements designed to enable it to determine whether trustees or managers of occupational pension schemes are complying with the requirements of regulations 35 and 36.

(2) The Pensions Regulator must also maintain arrangements for enforcing compliance by trustees or managers of occupational pension schemes with those requirements.

Temporary prohibition relating to management functions

43.—(1) If the FCA considers that an individual has contravened, or has been knowingly concerned in the contravention of, a relevant requirement, the FCA may impose a temporary prohibition on that individual from holding an office or position involving responsibility for taking decisions about the management of an originator, sponsor or SSPE.

(2) If the PRA considers that an individual has contravened, or has been knowingly concerned in the contravention of—

(a) PRA securitisation rules,

(b) regulation 44, in a case where the temporary prohibition was imposed by the PRA,

(c) a requirement imposed under regulation 56 by the PRA, or

(d) a requirement imposed under section 55M of FSMA 2000 (imposition of requirements by PRA) which relates to securitisations,

the PRA may impose a temporary prohibition on that individual from holding an office or position involving responsibility for taking decisions about the management of an originator, sponsor or SSPE.

(3) A temporary prohibition imposed under paragraph (1) or (2) expires at the end of such period as the regulator imposing it may specify, but the imposition of a temporary prohibition does not affect the regulator's power to impose a further temporary prohibition under that paragraph.

(4) A temporary prohibition under paragraph (1) or (2) may relate to the management of—

(a) a named originator, sponsor or SSPE;

(b) an originator, sponsor or SSPE of a specified description; or

(c) any originator, sponsor or SSPE.

(5) A regulator may revoke a temporary prohibition imposed by it under this regulation, or vary it so as to reduce the period for which it has effect.

(6) In this regulation, "PRA securitisation rules" means rules made by the PRA under section 137G of FSMA 2000 which make provision of the kind mentioned in regulation 5(2) in relation to securitisations.

Temporary prohibition relating to management functions: obligations on originator, sponsor or SSPE

44. An originator, sponsor or SSPE who is not an authorised person must take reasonable care to ensure that no individual holds an office or position involving responsibility for taking decisions about the management of that entity in contravention of a temporary prohibition imposed under regulation 43(1) or (2).

Imposition of temporary ban on STS notifications

45.—(1) If the FCA considers that—

(a) an originator, sponsor or SSPE has failed to meet the requirements of designated activity rules made by virtue of regulation 5, so far as those rules relate to STS securitisations, or

(b) an originator or sponsor has made a misleading STS notification,

the FCA may, for such period as it considers appropriate, temporarily ban the originator or sponsor from making an STS notification.

(2) The FCA may—

(a) revoke a temporary ban imposed under paragraph (1), or

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

(3) The FCA must consult the PRA before imposing a temporary ban on an originator or sponsor who is a PRA-authorised person, or varying such a ban so as to extend the period for which it has effect.

Procedure for imposition, variation or revocation of a temporary ban on STS notifications

46.—(1) Where the FCA exercises its functions under regulation 45, its decision takes effect—

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

(b) on such other a 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 45 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).

(3) If the FCA proposes to exercise, or exercises, its functions under regulation 45, it must give the originator or sponsor a written notice.

(4) The notice must—

(a) give details of the temporary ban or variation,

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

(c) inform the originator or sponsor that they may make representations to the FCA within such period as may be specified in the notice (whether or not the originator or sponsor has referred the matter to the Tribunal)

(d) inform the originator or sponsor when the temporary ban, or the revocation of the temporary ban or the variation of the temporary ban takes effect, and

(e) inform the originator or sponsor of their right to refer the matter to the Tribunal and an indication of the procedure for such a reference.

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

(6) If, having considered any representations made by a person to whom the notice was given, the FCA decides—

(a) to impose the temporary ban, or revoke or vary the temporary ban, in the way proposed,

(b) not to impose the temporary ban, or revoke or vary the temporary ban, in the way proposed,

(c) to revoke the temporary ban, or the variation of the temporary ban, which has taken effect,

(d) if the temporary ban has been imposed or varied, not to revoke the temporary ban or variation of the temporary ban, or

(e) to impose or vary the temporary ban in a different way,

it must give the person written notice.

(7) A notice given under paragraph (6)(a), (d) or (e) must inform the person to whom it is given of the person's 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.

Public censure

47.—(1) If the FCA considers that—

(a) a regulated person has contravened a relevant requirement,

(b) a member of the management body of a regulated person, other than a securitisation repository, was knowingly concerned in the contravention by the regulated person of a relevant requirement,

(c) another member of the senior management of a regulated person, other than a securitisation repository, was knowingly concerned in the contravention by the regulated person of a relevant requirement, or

(d) an originator, sponsor or SSPE has failed to comply with regulation 44 in a case where—

(i) the temporary prohibition was imposed by the FCA or the PRA and the originator, sponsor or SSPE is an authorised person but not a PRA-authorised person, or

(ii) the temporary prohibition was imposed by the FCA and the originator, sponsor or SSPE is not an authorised person,

the FCA may publish a statement to that effect.

(2) If a regulator considers that an individual on whom a temporary prohibition has been imposed under regulation 43 by that regulator has breached the prohibition, the regulator may publish a statement to that effect.

(3) If the PRA considers that an originator, sponsor or SSPE—

(a) has failed to comply with regulation 44 in a case where the temporary prohibition was imposed by the PRA, or

(b) has failed to comply with a direction given by the PRA under regulation 56,

the PRA may publish a statement to that effect.

Financial penalties

48.—(1) If the FCA considers that—

(a) a regulated person has contravened a relevant requirement,

(b) a member of the management body of a regulated person, other than a securitisation repository, was knowingly concerned in the contravention by the regulated person of a relevant requirement,

(c) another member of the senior management of a regulated person, other than a securitisation repository, was knowingly concerned in the contravention by the regulated person of a relevant requirement, or

(d) an originator, sponsor or SSPE has failed to comply with regulation 44 in a case where—

(i) the temporary prohibition was imposed by the FCA or the PRA and the originator, sponsor or SSPE is an authorised person but not a PRA-authorised person, or

(ii) the temporary prohibition was imposed by the FCA and the originator, sponsor or SSPE is not an authorised person,

the FCA may impose a penalty of such amount as it considers appropriate.

(2) If a regulator decides that an individual on whom a temporary prohibition has been imposed under regulation 43 by that regulator has breached the prohibition, the regulator may impose a penalty of such amount as it considers appropriate on that individual.

(3) If the PRA considers that an originator, sponsor or SSPE—

(a) has failed to comply with regulation 44 in a case where the temporary prohibition was imposed by the PRA, or

(b) has failed to comply with a direction given by the PRA under regulation 56,

the PRA may impose a penalty of such amount as it considers appropriate.

(4) A penalty imposed by a regulator under this regulation is payable to that regulator and may be recovered as a debt owed to that regulator.

Warning notice

49.—(1) If the FCA proposes—

(a) to refuse under regulation 28, an application under regulation 27 for registration as a third party verification service,

(b) to withdraw the registration of a third party verification service under regulation 32,

(c) to refuse an application to withdraw a person's registration to provide a third party verification service under regulation 33,

(d) to impose a temporary prohibition under regulation 43,

(e) to publish a statement in respect of a person under regulation 47,

(f) to impose a penalty on a person under regulation 48,

it must give the person a warning notice.

(2) If the PRA proposes—

(a) to impose a temporary prohibition under regulation 43,

(b) to publish a statement in respect of a person under regulation 47,

(c) to impose a penalty on a person under regulation 48,

it must give the person a warning notice.

(3) A warning notice about a proposal to impose a temporary prohibition in relation to management functions under regulation 43 must set out the terms of the proposed prohibition.

(4) A warning notice about a proposal to publish a statement under regulation 47 must set out the terms of the statement.

(5) A warning notice about a proposal to impose a penalty under regulation 48 must state the amount of the proposed penalty.

(6) A warning notice must inform the person concerned that the person may make representations to the regulator who gave the notice 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

50.—(1) If, having considered any representations made in response to the warning notice, the FCA decides—

(a) to refuse under regulation 28, an application under regulation 27 for registration as a third party verification service,

(b) to withdraw a person's registration to provide a third party verification service under regulation 32,

(c) to refuse an application to withdraw a person's registration to provide a third party verification service under regulation 33,

(d) to impose a temporary prohibition under regulation 43 (whether or not in the terms proposed),

(e) to publish a statement in respect of a regulated person under regulation 47 (whether or not in the terms proposed),

(f) to impose a penalty on a regulated person under regulation 48 (whether or not of the amount proposed),

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

(2) If, having considered any representations made in response to the warning notice, the PRA decides—

(a) to impose a temporary prohibition under regulation 43,

(b) to publish a statement in respect of a person under regulation 47,

(c) to impose a penalty on a person under regulation 48,

it must give the person a decision notice.

(3) A decision notice about a decision to impose a temporary prohibition in relation to management functions under regulation 43 must set out the terms of the prohibition.

(4) A decision notice about a decision to publish a statement under regulation 47 must set out the terms of the statement.

(5) A decision notice about a decision to impose a penalty under regulation 48 must state the amount of the penalty.

(6) After a statement under regulation 47 (public censure) is published, the regulator that published it must send a copy of it to the person concerned and to any person to whom a copy of the decision notice is given under section 393(4) of FSMA 2000 (third party rights), as applied by Schedule 1.

Right to refer matters to Tribunal

51.—(1) A person to whom a decision notice is given under regulation 50 may refer the matter to the Tribunal.

(2) If the FCA decides temporarily to withdraw a registration to provide a third party verification service under regulation 30, or varies the details of the temporary withdrawal so as to extend the period for which it has effect, the person concerned may refer the matter to the Tribunal.

(3) If the FCA imposes a temporary ban under regulation 45, or varies such a ban so as to extend the period for which it has effect, the person concerned may refer the matter to the Tribunal.

Consultation in relation to certain enforcement action

52.—(1) The FCA must consult the PRA before giving a warning notice under regulation 49(1)(a), (b), (c), (e) or (f) or a decision notice under regulation 50(1)(a) (b), (c), (e) or (f) in relation to a person who—

(a) is a PRA-authorised person, or

(b) has a qualifying relationship with a PRA-authorised person.

(2) The FCA must consult the PRA before giving a warning notice under regulation 49(1)(d) or a decision notice under regulation 50(1)(d) if as a result of the prohibition in question an individual would be prohibited from performing a management function in relation to a PRA-authorised person.

(3) The PRA must consult the FCA before giving a warning notice under regulation 49(2).

(4) 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.

(5) In this regulation "immediate group" has the meaning given in section 421ZA of FSMA 2000.

Statement of policy

53.—(1) Each regulator must prepare and issue a statement of policy with respect to—

(a) the imposition of a prohibition under regulation 43,

(b) the period of a prohibition under that regulation,

(c) the imposition of penalties under regulation 48, and

(d) the amount of penalties under that regulation.

(2) The policy must require the regulator, in determining the amount of the penalty to be imposed on any person, to take account of all relevant circumstances including, where appropriate—

(a) the impact, gravity and duration of the contravention for which the penalty is to be imposed

(b) the extent of the person's responsibility for the contravention;

(c) the financial position of the person;

(d) the amount of profit gained or loss avoided as a result of the contravention, so far as this can be determined;

(e) the amount of loss sustained as a result of the contravention by any other person, so far as this can be determined;

(f) the level of co-operation by the person with the regulator (without prejudice to the need to ensure that the person accounts for or makes good any profit sustained or loss avoided as a result of the contravention);

(g) any previous contravention by the person for which a penalty was or could have been imposed under regulation 48.

(3) A regulator may at any time alter or replace a statement issued by it under this regulation.

(4) If a statement issued under this regulation is altered or replaced by a regulator, the regulator must issue the altered or replacement statement.

(5) A regulator must, without delay, give the Treasury a copy of any statement which it issues under this regulation.

(6) A statement issued under this regulation by a regulator must be published by the regulator in the way appearing to the regulator to be best calculated to bring it to the attention of the public.

(7) The regulator may charge a reasonable fee for providing a person with a copy of the statement.

(8) In exercising, or deciding whether to exercise, its power under regulation 43 (temporary prohibition relating to management functions) or under regulation 48 (financial penalties) in the case of any particular contravention, a regulator must have regard to any statement of policy published by it under this regulation and in force at the time when the contravention in question occurred.

Statement of policy: procedure

54.—(1) Before a regulator issues a statement under regulation 53, the regulator must publish a draft of the proposed statement in the way appearing to the regulator to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by a notice that representations about the proposed statement may be made to the regulator within a specified time.

(3) Before issuing the proposed statement the regulator must have regard to any representations made to it in accordance with paragraph (2).

(4) If the regulator issues the proposed statement it must publish an account, in general terms, of—

(a) the representations made to it in accordance with paragraph (2); and

(b) its response to them.

(5) If the statement differs from the draft published under paragraph (1) in a way which is, in the opinion of the regulator, significant, the regulator must (in addition to complying with paragraph (4)) publish details of the difference.

(6) The regulator may charge a reasonable fee for providing a person with a copy of a draft published by it under paragraph (1).

Restriction on penalties

55.—(1) A person who is convicted of an offence under section 398 of FSMA 2000 as applied by paragraph 13 of Schedule 1 to these Regulations is not subsequently liable to a penalty under regulation 48 (financial penalties) in respect of the same act or omission.

(2) A person on whom a penalty has been imposed under regulation 48 (financial penalties) is not subsequently liable for an offence under section 398 of FSMA 2000 as applied by paragraph 13 of Schedule 1 to these Regulations in respect of the same act or omission.

Transparency requirements – power of direction

56.—(1) This regulation applies where the originator, sponsor or SSPE of a private securitisation is established in the United Kingdom.

(2) The originator, sponsor or SSPE must make the information referred to in the relevant provisions available to the appropriate regulator in such manner as the appropriate regulator may direct.

(3) In paragraph (2)—

(a) "the relevant provisions" means any provisions of the appropriate rules that require the originator, sponsor or SSPE to provide information in relation to a securitisation;

(b) "the appropriate regulator" means—

(i) in the case of a PRA-authorised person, the PRA, and

(ii) in any other case, the FCA.

(4) In this regulation—

"the appropriate rules" means—

(a) in the case of a PRA-authorised person, rules made by the PRA under section 137G of FSMA 2000;

(b) in any other case, designated activity rules made by virtue of regulation 5;

"private securitisation" means a securitisation for which section 85 of FSMA 2000 (prohibition of dealing etc in transferable securities without approved prospectus) and rules made by the FCA for the purposes of Part 6 of that Act (official listing) do not require an approved prospectus to be drawn up.

PART 10

Application of provisions of FSMA 2000 and consequential amendments

Amendment, or application with modifications, of provisions of FSMA 2000

57. In Schedule 1—

(a) Part 1 contains amendments of FSMA 2000;

(b) Part 2 applies provisions of FSMA 2000 with modifications.

Amendments of other legislation

58. Schedule 2 contains amendments of other legislation, including consequential amendments. [*This Schedule is incomplete*.]

PART 11

Transitional provisions

Saving for certain pre-2019 securitisations

59.—(1) These Regulations do not apply in relation to pre-2019 securitisations.

(2) The revocation of the EU Securitisation Regulation 2017 by section 1(1) of, and Schedule 1 to, the Financial Services and Markets Act 2023 does not affect the application to pre-2019 securitisations of paragraphs 2 to 4A of Article 43 of that Regulation.

(3) The revocation of the Securitisation Regulations 2018 by section 1(1) of, and Schedule 1 to, the Financial Services and Markets Act 2023 does not affect the application of those Regulations in relation to the enforcement of Article 43(2) of the EU Securitisation Regulation 2017 so far as remaining in force by virtue of paragraph (2).

(4) In this regulation "pre-2019 securitisations" means—

(a) securitisations the securities of which were issued before 1 January 2019, or

(b) securitisations in relation to which the following conditions are met—

(i) the securitisations do not involve the issue of securities,

(ii) the initial securitisation positions of the securitisations were created before 1 January 2019, and

(iii) no new securitisations positions of the securitisations have been created on or after that day.

Further transitional provisions

60. Schedule 3 contains further transitional provisions.

PART 12

Review

Review

61.—(1) The Treasury must from time to time—

(a) carry out a review of the regulatory provision contained in regulations 3 to 57 (including Schedule 1), and

(b) publish a report setting out the conclusions of the review.

(2) The first report must be published before the end of the period of 5 years beginning with the initial commencement day.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) Each report must in particular—

(a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a),

(b) assess the extent to which those objectives are achieved,

(c) assess whether those objectives remain appropriate, and

(d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(5) In this regulation "regulatory provision" has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

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

SCHEDULE 1

Regulation 57

Amendment, or application with modifications, of provisions of FSMA 2000

PART 1

Amendments of FSMA 2000

1. FSMA 2000 is amended as follows.

2. In section 39 (exemption of appointed representatives), in subsection (4)—

(a) omit the "or" immediately following paragraph (a), and

(b) after that paragraph insert—

"(aa) a provision contained in or made under the Securitisation Regulations 2023,".

3. In section 66A (misconduct: action by the FCA), in subsection (4)—

(a) omit the "or" immediately following paragraph (ab), and

(b) after that paragraph insert—

"(ac) imposed by or under the Securitisation Regulations 2023,".

4. In section 66B (misconduct: action by the PRA), in subsection (4)—

(a) omit the "or" immediately following paragraph (a), and

(b) after that paragraph insert—

"(aa) imposed by or under the Securitisation Regulations 2023, or".

5. In section 168 (appointment of persons to carry out investigations in particular cases), in subsection (4), after paragraph (ic) insert—

"(id) a person may have contravened any provision made by or under the Securitisation Regulations 2023;".

6.—(1) Section 204A (meaning of "relevant requirement" and "appropriate regulator" for purposes of Part 14) is amended as follows.

(2) In subsection (2), after paragraph (aa) insert—

"(ab) by or under the Securitisation Regulations 2023,".

(3) In subsection (6), after paragraph (aa) insert—

"(ab) by or under the Securitisation Regulations 2023,".

PART 2

Application with modifications of provisions of FSMA 2000

Interpretation

7. In this Part of this Schedule "regulated person" has the meaning given in regulation 40.

Hearings and appeals

8.—(1) Part 9 of FSMA 2000 (hearings and appeals) applies in respect of references made to the Tribunal under these Regulations as it applies in respect of references made to the Tribunal under FSMA 2000 in respect of a decision of the FCA or the PRA, but with the modifications set out in sub-paragraphs (2) and (3).

(2) Section 133 of FSMA 2000 (proceedings before Tribunal: general provision) is to be read as if—

(a) in subsection (1), the words "(whether made under this or any other Act)" were omitted, and

(b) for subsection (7A) there were substituted—

"(7A) A reference is a "disciplinary reference" for the purposes of this section if it is in respect of a decision to—

(b) impose a temporary prohibition under regulation 43 of the Securitisation Regulations 2023;

(c) publish a statement under regulation 47 of those Regulations;

(d) impose a penalty under regulation 48 of those Regulations.".

(3) Section 133A of FSMA 2000 (proceedings before Tribunal: decision and supervisory notices, etc) is to be read as if the words "as a result of section 388(2)" were omitted.

FCA rules and guidance

9.—(1) The provisions of Part 9A of FSMA 2000 listed in sub-paragraph (2) apply in relation to rules made by the FCA under regulation 23 or 39(1) of these Regulations as they apply in relation to rules made by the FCA under FSMA 2000, but subject to the modification in sub-paragraph (3).

(2) 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 138E (limits on effect of contravening rules);

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

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

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

(3) The modification is that section 137T (general supplementary powers) is to be read as if any reference to authorised persons were—

(a) in the case of rules under regulation 23, a reference to securitisation repositories registered under Part 6;

(b) in the case of rules under regulation 39(1), a reference to small registered UK AIFMs.

(4) Section 138D (actions for damages) applies in relation to rules made by the FCA under regulation 39(1), as it applies in relation to rules made by the FCA under FSMA 2000, but as if the reference in subsection (2) of section 138D to an authorised person were a reference to a small registered UK AIFM.

(5) In this paragraph "small registered UK AIFM" has the same meaning as in regulation 39.

Information gathering and investigations

10.—(1) Part 11 of FSMA 2000 (information gathering and investigations) applies in relation to the FCA's and the PRA's functions under these Regulations as it applies in relation to the FCA's and the PRA's functions under FSMA 2000, but with the modifications set out in sub-paragraphs (2) to (11).

(2) Part 11 is to be read as if any reference to an authorised person included a reference to a regulated person.

(3) Section 167 (appointment of persons to carry out general investigations) is to be read as if in subsection (5), for "regulated activities" there were substituted "the activities subject to regulation as a result of the Securitisation Regulations 2023".

(4) Section 169 (investigations etc in support of overseas regulator) is to be read as if—

(a) subsection (2A) were omitted, and

(b) for subsection (13) there were substituted—

"(13) "Overseas regulator" means an authority in a country or territory outside the United Kingdom which has functions corresponding to those of the FCA or the PRA under the Securitisation Regulations 2023.".

(5) Section 169A (support of overseas regulator with respect to financial stability) does not apply.

(6) Section 170 (investigations: general) is to be read as if subsection (3)(b) were omitted.

(7) Section 171 (powers of persons appointed under section 167) is to be read as if subsections (3A) and (7) were omitted.

(8) Section 173 (powers of persons appointed as a result of section 168(2)) does not apply.

(9) Section 174 (admissibility of statements made to investigators) is to be read as if—

(a) in subsection (2), the words from "or in proceedings" to "this section applies" were omitted,

(b) subsection (3) were omitted,

(c) in subsection (4), the words from "or (5)" to the end were omitted, and

(d) in subsection (5) ", 173" were omitted.

(10) Section 176 (entry of premises under warrant) is to be read as if—

(a) in subsection (1), "the Secretary of State" were omitted,

(b) subsection (3)(b) were omitted,

(c) in subsection (10), "or (5)" were omitted, and

(d) in subsection (11)—

(i) in paragraph (a), "87C, 87J," and ",165A, 169A" were omitted, and

(ii) in paragraph (b), ", 173" were omitted.

Injunctions and restitution

11.—(1) Part 25 of FSMA 2000 (injunctions and restitution) applies in respect of—

(a) a relevant requirement as defined in regulation 40, or

(b) a requirement imposed by the PRA under regulation 43 or 56, or

(c) the requirement imposed by regulation 44 in a case where the temporary prohibition was imposed by the PRA,

as it applies in respect of a relevant requirement as defined for the purposes of a provision of that Part, but with the modifications set out in this paragraph.

(2) Part 25 is to be read as if—

(a) each reference to the Act included a reference to these Regulations,

(b) each reference to a section of the Act were a reference to that Act as applied by these Regulations,

(c) references to the Secretary of State were omitted, and

(d) each reference to an authorised person included a reference to a regulated person.

(3) Section 380 (injunctions) is to be read as if—

(a) references to the appropriate regulator were references to the PRA where the requirement falls within sub-paragraph (1)(b) or (c) and references to the FCA in any other case, and

(b) subsections (7) to (12) were omitted.

(4) Section 381 (injunctions in case of market abuse) does not apply.

(5) Section 382 (restitution orders) is to be read as if—

(a) references to the appropriate regulator were references to the to the PRA where the requirement falls within sub-paragraph (1)(b) or (c) and references to the FCA in any other case, and

(b) subsections (10) to (15) were omitted.

(6) Section 383 (restitution orders in cases of market abuse) does not apply.

(7) Section 384 (power of FCA or PRA to require restitution) is to be read as if—

(a) references to the appropriate regulator were references to the to the PRA where the requirement falls within sub-paragraph (1)(b) or (c) and references to the FCA in any other case,

(b) in subsection (1), the reference to an authorised person were a reference to a regulated person,

(c) subsections (2) and (3) and references to those subsections were omitted, and

(d) subsections (7) to (13) were omitted.

Notices

12.—(1) Part 26 of FSMA 2000 (notices), other than sections 391A, 391B, 391C, 391D, 391E and 391F, applies with respect to the giving of notices by the FCA or the PRA under regulations 49 and 50 of these Regulations and under FSMA 2000 as applied by these Regulations as it applies with respect to the giving of notices by the FCA or the PRA under FSMA 2000, but with the following modifications.

(2) Section 387 (warning notices) is to be read as if subsections (1A) and (3A) were omitted.

(3) Section 388 (decision notices) is to be read as if subsections (1A) and (2) were omitted.

(4) Section 391 (publication) is to be read as if—

(a) references to a supervisory notice were references to a notice under regulation 31(3) or (6)(a), (d) or (e) or 46(3) or (6)(a), (d) or (e);

(b) in subsection (1), the reference to a warning notice falling within subsection (1ZB) were a reference to a warning notice given under regulation 49;

(c) subsections (1ZA), (1ZB), (4A), (5A), (6A), (7A), (7B), (8A), (8B), (8C), (8D) and (8E) were omitted.

(5) Section 392 (application of sections 393 and 394) is to be read as if—

(a) for paragraphs (a) and (b) there were substituted—

"(a) a warning notice given in accordance with regulation 49 of the Securitisation Regulations 2022 or section 385 as applied by those Regulations;

(b) a decision notice given in accordance with regulation 50 of those Regulations, or section 386 as applied by those Regulations.".

(6) Section 395 (the FCA's and PRA's procedures) is to be read as if references to a supervisory notice were references to a notice under regulation 31(3) or (6)(a), (d) or (e) or under regulation 46(3) or (6)(a), (d) or (e).

Offences

13.—(1) Section 398 of FSMA 2000 applies in relation to requirements imposed by or under these Regulations as it applies in relation to requirements imposed by or under FSMA 2000.

(2) Section 400 of FSMA 2000 (offences by bodies corporate etc) applies in respect of offences under FSMA 2000 as applied by these Regulations as it applies in respect of offences under FSMA 2000.

(3) Section 401 of FSMA 2000 (proceedings for offences) applies in respect of offences under FSMA 2000 as applied by these Regulations as it applies in respect of offences under FSMA 2000 but as if—

(a) subsection (1)(c) were omitted;

(b) references to the Secretary of State were omitted;

(c) subsections (3A), (3AB) and (3B) were omitted.

(4) Section 403 of FSMA 2000 (jurisdiction and procedure in respect of offences) applies in respect of offences under FSMA 2000 as applied by these Regulations as it applies in respect of offences under FSMA 2000.

Limitation on power to require documents

14. Section 413 of FSMA 2000 (protected items) applies for the purposes of these Regulations as it applies for the purposes of FSMA 2000.

Consultation in relation to taking of certain enforcement action

15. Section 415B of FSMA 2000 (consultation in relation to taking certain enforcement action) applies in respect of—

(a) notices given by the FCA or the PRA under regulation 49 or 50 of these Regulations, and

(b) applications to the court by the FCA or the PRA under a provision of FSMA 2000 as applied by these Regulations.

Penalties

16.—(1) Paragraphs 19 to 21 (penalties) of Schedule 1ZA to FSMA 2000 apply with respect to penalties imposed by the FCA under these Regulations and under FSMA 2000 as applied by these Regulations as they apply with respect to penalties imposed by the FCA under FSMA 2000, but with the following modifications.

(2) For the purposes of paragraph 20, the FCA's enforcement powers are to be taken to include—

(a) its powers under the provisions mentioned in section 133(7A) as applied by this Schedule and under Part 25 of FSMA 2000 as applied by this Schedule;

(b) its powers in relation to the investigation of offences under any provision of FSMA 2000 as applied by this Schedule;

(c) its powers in England and Wales or Northern Ireland in relation to the prosecution of such offences.

(3) For the purposes of paragraph 21, "regulated persons" include regulated persons within the meaning of this Part of this Schedule.

17.—(1) Paragraphs 27 to 30 (penalties) of Schedule 1ZB to FSMA 2000 apply with respect to penalties imposed by the PRA under these Regulations and under FSMA 2000 as applied by these Regulations as they apply with respect to penalties imposed by the PRA under FSMA 2000, but with the following modifications.

(2) For the purposes of paragraph 28, the PRA's enforcement powers are to be taken to include—

(a) its powers under the provisions mentioned in section 133(7A) as applied by this Schedule;

(b) its powers in relation to the investigation of offences under any provision of FSMA 2000 as applied by this Schedule;

(c) its powers in England and Wales or Northern Ireland in relation to the prosecution of such offences.

(3) For the purposes of paragraph 29, "PRA-authorised persons" include regulated persons within the meaning of this Part of this Schedule.

SCHEDULE 2

Regulation 58

Amendments to other legislation and consequential amendments

Amendment to EMIR

1. In Article 4 of EMIR (clearing obligation) in paragraph 5A(a)—

(a) the words from "a securitisation notified as STS" to the end become paragraph (i);

(b) at the end of that paragraph insert—

"; or

(ii) an STS equivalent non-UK securitisation within the meaning of the Securitisation Regulations 2023.".

Amendment to the capital requirements regulation

2.—(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 within the meaning of the Securitisation Regulations 2023;".

Amendments to the Solvency 2 delegated regulation

3.—(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 within the meaning of the Securitisation Regulations 2023;".

Amendments to the money market funds regulation

4. In Article 11(1) of Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds (eligible securitisations and ABCPs), after paragraph (c) insert—

"(d) an STS equivalent non-UK securitisation within the meaning of the Securitisation Regulations 2023.".

[*Schedule incomplete*]

SCHEDULE 3

Regulation 60

Transitional provisions

Interpretation

1.—(1) In this Schedule "the EU-derived securitisation legislation" means—

(a) the EU Securitisation Regulation 2017 and any provision made under it,

(b) any technical standards to which Chapter 2A or Part 9A of FSMA 2000 applies which were originally made under the EU Securitisation Regulation 2017, and

(c) the Securitisation Regulations 2018.

(2) Any reference in this Schedule to the revocation of the EU-derived securitisation legislation is a reference to its revocation by section 1(1) of, and Schedule 1 to, the Financial Services and Markets Act 2023.

STS securitisations on list maintained by FCA under EU Securitisation Regulation 2017

2.—(1) On the main commencement day, the FCA must include on the list referred to in regulation 11(2) any securitisations that were immediately before that day included on the list maintained by the FCA under Article 27(5) of the EU Securitisation Regulation 2017.

(2) Paragraph (1) does not affect the powers of the FCA under regulation 11(3).

(3) The question of whether a securitisation that has been included in the list as a result of paragraph (1) meets the STS criteria at any time on or after the main commencement day is to be determined by reference to the provisions of Articles 20, 21 and 22 of the EU Securitisation Regulation 2017.

Temporary bans on STS notifications

3.—(1) Where immediately before the main commencement day a temporary ban has effect under regulation 21 of the Securitisation Regulations 2018, the temporary ban is to be treated for the remainder of the period for which it is to have effect as having been imposed under regulation 45 of these Regulations, but this is subject to the powers of the FCA under regulation 45(2).

(2) In regulation 45(1)(a) a reference to failure to meet the requirements of designated activity rules made by virtue of regulation 5, so far as those rules relate to STS securitisations, is to be read as including a reference to—

(a) a failure before the main commencement day to meet the requirements of Article 19, 20, 21, 23, 24, 25 or 26 of the EU Securitisation Regulation 2017, in a case where no decision notice has been given before the main commencement day, or

(b) the making of a misleading notification pursuant to Article 27(1) of the EU Securitisation Regulation 2017, in a case where no decision notice has been given before that day.

Securitisation repositories

4.—(1) This paragraph applies to a securitisation repository that immediately before the main commencement day is registered with the FCA for the purposes of Article 5 of the EU Securitisation Regulation 2017 under Article 10 of that Regulation.

(2) On and after the main commencement day, the securitisation repository is to be taken to have been registered under regulation 15 of these Regulations, but this is subject to the provisions of these Regulations relating to the withdrawal of registration.

5. Where immediately before the main commencement day a securitisation repository is subject to a requirement imposed under regulation 64A of the Over the Counter Derivatives, Central Counterparties and Trade Depositories (Amendment, etc, and Transitional Provision) Regulations 2019 as applied by Article 15 of the EU Securitisation Regulation 2017, the requirement is to be taken on or after that day to have been imposed under regulation 24 of these Regulations.

Third party verification services

6.—(1) This paragraph applies to a person who immediately before the main commencement day is authorised by the FCA for the purposes of Article 28 of the EU Securitisation Regulation 2017 to provide a third party verification service.

(2) On and after the main commencement day, the person is to be taken to have been registered under regulation 26 of these Regulations, but this is subject to the provisions of these Regulations relating to the withdrawal of registration.

References to Tribunal

7.—(1) This paragraph applies where immediately before the main commencement day—

(a) a person has a right to make a reference to the Tribunal in respect of any decision of the FCA to refuse—

(i) registration as a securitisation repository under Article 10 of the EU Securitisation Regulation 2017, or

(ii) authorisation for the purposes of Article 28 of the EU Securitisation Regulation 2017 to provide a third party verification service, or

(b) such a reference has been made but not determined.

(2) These Regulations and the revocation of the EU-derived securitisation legislation do not affect the reference to the Tribunal.

(3) If the Tribunal refer the matter to the FCA for decision, paragraph 4 or 6 applies in relation to registration or authorisation in accordance with a direction of the Tribunal as it applies in relation to registration or authorisation having effect immediately before the main commencement day.

Temporary prohibitions relating to management functions

8.—(1) Where, immediately before the main commencement day, a temporary prohibition has effect under regulation 5 of the 2018 Regulations, the temporary prohibition is to be treated for the remainder of the period for which it is to have effect has having been imposed under regulation 43 of these Regulations by the regulator which imposed it, but this is subject to the powers of the regulator under regulation 43(4).

(2) In regulation 43(1), the reference to a contravention of a relevant requirement is to be read as including a contravention before the main commencement day of a relevant requirement as defined in regulation 2(1) of the 2018 Regulations as respects which the FCA was the appropriate regulator.

(3) In regulation 43(2), the reference to a contravention of PRA securitisation rules is to be read as including a contravention before the main commencement day of a relevant requirement as defined in regulation 2(1) of the 2018 Regulations as respects which the PRA was the appropriate regulator.

(4) Sub-paragraphs (2) and (3) do not apply where, before the main commencement day, a decision notice has been given relating to the imposition of a temporary prohibition under regulation 5 of the 2018 Regulations by reference to the contravention in question.

Disciplinary measures in respect of contraventions before main commencement day

9.—(1) The revocation of the EU-derived prospectus legislation does not affect the exercise by the FCA or the PRA, in respect of things done or omitted before the main commencement day, of their powers—

(a) under regulation 7 of the Securitisation Regulations 2018 (public censure) or regulation 8 of those Regulations (financial penalties),

(b) under any provision of the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc, and Transitional Provisions) (EU Exit) Regulations 2019 as applied by the Securitisation Regulations 2018, or

(c) under any provision of FSMA 2000 as applied by the Securitisation Regulations 2018.

(2) Paragraph (1) does not limit the application of section 16 of the Interpretation Act 1978.

Directions given under regulation 25 of Securitisation Regulations 2018

10.—(1) Any direction given by the FCA or the PRA under regulation 25 of the Securitisation Regulations 2018 that is in force immediately before the main commencement day is to have effect on and after that day as if given under regulation 56, and may be varied or revoked by a direction under that regulation.

(2) On and after the main commencement day, any direction to which sub-paragraph (1) applies is to be read as if—

(a) any reference to a private securitisation were a reference to a private securitisation as defined in regulation 56,

(b) the reference to the information under Article 7(1)(a) to (g) of the EU Securitisation Regulation 2017 were a reference to the information referred to in the relevant provisions as defined in regulation 56(3)(a),

(c) other expressions defined by reference to the EU Securitisation Regulation 2017 had the same meaning as in these Regulations, and

(d) the reference to an entity designated under subparagraph 1 of Article 7(2) of the EU Securitisation Regulations 2017 were a reference to an entity designated under an equivalent provision of designated activity rules made by virtue of regulation 5 or rules made by the PRA under section 137G of FSMA 2000.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations designate certain securitisation activities for the purposes of the Financial Services and Markets Act 2000 (see Part 5A) and confer powers on the FCA to make rules and give directions in relation to these activities. The activities are acting as an originator, sponsor, original lender or securitisation special purpose entity in a securitisation and selling a securitisation position to a retail client in the United Kingdom.

The Regulations specify the coherence of the overall framework for the regulation of securitisation as a matter to which the FCA and PRA must have regard when making rules relating to securitisation.

The Regulations also 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 are being revoked by section 1(1) of, and Schedule 1 to, the Financial Services and Markets Act 2023. Most other provisions revoked are restated (where appropriate with modifications) in rules made by the Financial Conduct Authority ("FCA") and Prudential Regulation Authority ("PRA").

Revoked provisions of the Securitisation Regulation restated in these Regulations, in some cases with modifications, include—

- Article 4 (restrictions on establishing a securitisation special purpose entity in high risk jurisdiction);
- Article 5 (due-diligence requirements) for trustees or managers of occupational pension schemes only;
- Articles 10 to 15 (registration of securities repositories);
- Article 18 (use of the designation "simple, transparent and standardised securitisation" or "STS");
- Article 27 (STS notification requirements) including the duty of the FCA to publish and maintain a list of STS securitisations;
- Article 28 (registration of third parties verifying STS compliance);
- 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);

The Regulations require the FCA and PRA to make rules setting out due-diligence requirements for certain institutional investors who are authorised persons and who are not trustees or managers of an occupational pension scheme. They also enable the FCA to make rules in relation to the holding of securitisation positions by small registered UK AIFMs.

The Regulations also restate, with some modifications, existing duties for the FCA and Pensions Regulator to monitor compliance and powers for the FCA and PRA to take enforcement action, including imposing disciplinary measures. The Treasury are required to review and report on these Regulations at least every 5 years.