Clients&FriendsMemo

Agreement Reached on Form of New EU Securitisation Regulation and on Amendments to the Capital Requirements Regulation

27 June 2017

Introduction

The EU legislative institutions have now agreed compromise amendments to the proposed EU regulation intended to lay down common rules on securitisation and to create a European framework for "simple, transparent and standardised" ("**STS**") securitisation (the "**Securitisation Regulation**")[1]. They have also agreed compromise amendments to the proposed regulation amending the Capital Requirements Regulation[2] (the "**CRR**"), which includes a new hierarchy of approaches for calculating exposures to securitisation transactions and provisions designed to result in the regulatory capital requirements for exposures to STS securitisations being lower than those for non-STS securitisations (the "**CRR Amendment Regulation**")[3] (together, the "**Regulations**"). This memorandum is written on the basis of our understanding of these agreed compromises.

Overview

Since the initial proposals were published nearly two years ago, there has been considerable debate regarding these proposed reforms to the securitisation legislative framework in the EU. This debate became particularly intense in the European Parliament as the political differences in attitudes towards the merits of securitisation in general became increasingly apparent. After nearly six months of discussion between representatives of the EU legislative institutions, agreement has now been reached on the form of the proposed Regulations. The result of these negotiations will

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1 Proposal for a Regulation of the European Parliament and of the Council laying down common rules on securitisation and creating a European framework for simple, transparent and standardised securitisation and amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012.

2 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

3 Proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms

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be a regime that is much more supportive of the European securitisation market than that which would have arisen from Parliament's draft of the Securitisation Regulation.

The Securitisation Regulation

Legislative Background

The European Commission[4] published its original proposal for the Securitisation Regulation (the "**Commission Proposal**"), together with its proposal for the CRR Amendment Regulation, on 30 September 2015. The Presidency of the Council of the European Union published its "Third Compromise Proposal" on 30 November 2015, which included the Council's proposed amendments to the Commission Proposal. The Council confirmed in early December 2015 that this was its agreed negotiating position ("**Council's Position**").

The European Parliament then considered the Commission Proposal in its Committee on Economic and Monetary Affairs ("**ECON**") throughout 2016. Following much discussion, compromises were agreed and ECON adopted its report, in the form of amendments to the Commission Proposal, in its vote on 8 December 2016 (as discussed in our Clients and Friends Memorandum of that date).[5] The European Parliament's adopted position was formally published in its Report dated 19 December 2016 ("**Parliament's Position**").

Trilogues

In the period since the European Parliament adopted its proposed amendments, representatives of Parliament, the Council and the Commission have met on a number of occasions in a process known as trilogue, with a view to negotiating a common position. The trilogue discussions began in January 2017 under the Maltese Presidency of the Council, which lasts for the six month period to 30 June 2017.

The matters discussed in trilogue consisted of technical drafting points and political issues. Many of the technical points were agreed with little difficulty, but most of the controversial amendments proposed by Parliament were classified as political issues. Significant progress on agreeing these political issues was achieved in the sixth political trilogue that took place on 16 May 2017, but the key compromises were reached in the trilogue on 30 May 2017. There have been further technical meetings since then and the final forms of the proposed Regulations are now emerging, although they have not yet formally been published. This memorandum is written on the basis of our understanding of the compromises agreed in trilogue.

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[4] Only the European Commission, which is the executive body of the EU, may propose primary EU legislation and such legislation, once proposed, is adopted only if approved by both the Council of the European Union and the European Parliament. The Council comprises representatives of the governments of the 28 EU member states. The European Parliament consists of members directly elected by voters in the EU member states ("MEPs").

[5] http://www.cadwalader.com/resources/clients-friends-memos/econ-agrees-compromise-amendments-to-stsrisk-retention

The European Parliament's Proposed Amendments

Parliament's Position had diverged widely from the Commission Proposal and the Council's Position. Many MEPs have expressed strong views regarding the securitisation market, for example, the view that issuers tend to make a selection of loans in their favour (so-called "cherry picking"). Many of Parliament's proposals were viewed as being controversial and potentially damaging to the securitisation markets. The Council and Commission were also strongly opposed to many of Parliament's proposed amendments. Faced with this opposition, Parliament has compromised on most of its proposed changes.

Risk Retention

Minimum Risk Retention Levels

The most significant and controversial of Parliament's proposals were those concerning minimum risk retention levels. Parliament proposed that minimum risk retention levels would increase from the current 5% to 10% for each risk retention option (save for the first loss tranche approach, where the minimum would remain at 5%, and the retention of a first loss exposure of every securitised exposure, where the minimum level would be 7.5%). However, Parliament also proposed that the European Banking Authority ("**EBA**") and the European Systemic Risk Board ("**ESRB**") would be mandated to take a decision on required retention rates of up to 20% in light of market circumstances. Parliament's proposed amendments also provided that risk retention rates would then be reviewed every two years.

Parliament's risk retention proposals were strongly resisted by the Commission and the Council. Both institutions published notes (termed "non-papers") setting out the reasons why a change in risk retention rates was not justified.

The Commission stated that there is a wide consensus around the adequacy of the current risk retention framework which was based on international standards. It noted that, in reviews and in three public consultations, EU supervisors had unanimously concluded that the current retention framework should remain unchanged. It quoted the European Central Bank's conclusion that not only was an increase of the 5% minimum retention rate not warranted, but that: *"…a retention rate increase would place European issuers at a disadvantage and very negatively impact the future viability of securitisation in Europe."* In light of these factors, the Commission stated that: *"any change to the risk retention framework would thus need to be supported by careful analysis and based on strong evidence supporting the proposed change. Such evidence has not been brought forward."*

The Council pointed out that the main aim of the Regulation, that of revitalising the EU securitisation market to contribute to improving the financing of the economy, would be undermined by Parliament's proposals. It emphasised that the proposed initiatives would, for example, have a

negative impact on the collateralised loan obligations market, which was important in providing finance to European companies. The Council thought that the proposed amendments would put European securitisation at a competitive disadvantage internationally. The Council also expressed serious reservations regarding the proposals to revisit the rates every two years in the future, which the Council noted would introduce excessive uncertainly into the securitisation market.

In light of the firm position of the Council and the Commission, Parliament compromised on these points and agreed to the maintenance of the current risk retention level of 5% for each mode of risk retention. This maintenance of the status quo removes a significant potential cause of instability in the European securitisation market and will be welcomed by market participants.

Risk Retention: Role of the ESRB

In return for this compromise, Parliament obtained agreement that the ESRB shall monitor developments in the securitisation market with respect to the build-up of any excessive risk and, where necessary, the ESRB, in collaboration with the EBA, will publish a report on the financial stability implications of the securitisation market. If the ESRB observes material risks, it will provide warnings and, where appropriate, issue recommendations for remedial action, including on the appropriateness of modifying the risk retention levels. These recommendations will be given to the Commission, the European Supervisory Authorities and the Member States, who will be required to report back to the ESRB, the Parliament and the Council the actions undertaken in response to any such recommendations. However, this role for the ESRB in proposing future changes to risk retention levels is much reduced from that originally envisaged by Parliament.

Risk Retention: Direct and Indirect Approaches and Jurisdictional Scope

The current obligation in the CRR is on EU institutional investors to ensure that one of the originator, sponsor or original lender retains (on an ongoing basis) a material net economic interest in the securitisation of not less than 5%. This is referred to as the "indirect" approach, since it places the onus on the investing institution to ensure that the risk retention obligations have been met. The Securitisation Regulation maintains the indirect approach (please see the due diligence requirements below), but supplements it with a "direct" obligation on one of the originator, sponsor or original lender to retain (on an ongoing basis) a material net economic interest in the securitisation of not less than 5%.

However, the jurisdictional ambit of the direct approach is not clear. In the Explanatory Memorandum to the original Commission Proposal, it was stated that *"For securitisations notably in situations where the originator, sponsor nor original lender is not established in the EU the indirect approach will continue to fully apply."* The provisions of the Securitisation Regulation do not explicitly set out the jurisdictional scope of the direct approach, but it appears from the Commission's comment that the intention is that where none of the originator, sponsor or original lender is "established in the EU", the direct approach will not apply. However, this interpretation is

based on one sentence in the Commission's Explanatory Memorandum, rather than on the provisions of the Securitisation Regulation itself.

This point can have practical implications for EU banks operating in non-EU countries, and whether they operate through branches or subsidiaries. Subsidiaries are separate legal entities, whereas branches are not. Given that the country in which a legal entity is "established" normally refers to that in which the legal entity is incorporated or has its registered office, there could be a difference in the application of the direct retention obligation according to whether an EU bank operates in a non-EU country through a subsidiary or through a branch.

So, for example, it appears that the direct risk retention requirement will apply to the US activities of EU established banks, including those taking place through US branches (which are part of the legal entities established in the EU). However (if the applicability of the direct obligation is to be based on whether or not the entity is "established" in the EU), it would appear that the direct obligation would not apply to the activities of a US subsidiary.

Risk Retention: "Originator"

For the purposes of the article on risk retention, the trilogue compromise includes the sole purpose test originally proposed by the Commission and by the Council, but not included in Parliament's Position. For the purposes of this article, an entity shall not be considered to be an originator where the entity has been established or operates for the "sole" purpose of securitising exposures.

This reflects the EBA identifying, in its report dated 22 December 2014, what it considered to be a potential loophole that could result from the abuse of the existing originator definition in the CRR. The EBA noted the possibility of creating an "originator" that met the legal definition of the CRR and which would hold the retention in a securitisation, but that could be established solely for buying exposures and securitising a third party's exposures. The EBA was of the view that the originator definition should ensure that the "originator" should be an entity of real substance. The Securitisation Regulation addresses this point with this provision regarding the originator.

Risk Retention: Cherry Picking Assets

Parliament's points about the possibility of issuers cherry picking assets in their favour resulted in its proposed amendment providing that losses on the securitised assets (measured over one year) should not be significantly higher than the losses over the same period on "homogenous assets", which were randomly selected from the assets retained on the balance sheet of the originator or original lender.

This issue was addressed in a different way in the compromise agreed in trilogue. Originators will not be allowed to select assets to be transferred to the Securitisation Special Purpose Entity ("**SSPE**") with the aim of rendering losses on the assets transferred to the SSPE, measured over

the life of the transaction (or a maximum of 4 years where the life of the transaction is longer than 4 years), higher than the losses over the same period on "comparable" assets held on the balance sheet of the originator. National regulators are empowered to impose sanctions where there is an *intentional* breach of this requirement.

Definition of Sponsor

The definition of "sponsor" has been widened from the current definition contained in the CRR. The definition agreed in trilogue now includes "credit institutions" (i.e., banks), whether or not located in the EU, and "investment firms" as defined in the MIFID II Directive[6]. The current definition in the CRR had been widely criticised as unnecessarily limiting the types of entity that could act as sponsor, since it refers to the narrow definition of investment firm contained in the CRR, rather than to the wider category of MIFID investment firms. The reference to the MIFID II definition of investment firm will be welcomed, since it will allow a wider category of entities to act as sponsor retention holder.

Parties to the Securitisation Market

Parliament wished to restrict the participants in the securitisation market, both as regards who could act as the retention holder and who could invest in securitisations.

Parliament's Position provided that at least one of the originator, sponsor or original lender in a securitisation (and so the retention holder) would need to be a specified type of regulated entity. The criticism generally expressed with Parliament's proposal was that it would effectively exclude corporate entities that are not regulated within the prescribed definitions from securitising assets, which would close off an important source of finance for such entities. In light of the reservations expressed by the Commission and Council, Parliament was persuaded to concede on this point in trilogue and no such restriction will appear in the Securitisation Regulation.

Parliament also wanted to restrict investors in securitisations to "institutional investors" (i.e. specified types of EU regulated entities), or institutions of non-EU countries whose regulatory requirements were considered equivalent. However, these proposals were criticised because they could have resulted in the exclusion of large numbers of non-EU investors from the EU securitisation market and so would have limited access to capital from outside the EU, as well as having the effect of concentrating securitisation risk in the EU. The Commission and Council argued that these limitations could be removed and replaced with restrictions on retail investors investing in securitisations, as long as these would not exclude sophisticated investors/high net worth individuals.

[6] Article 4(1) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU

The trilogue agreement reflected the wishes of the Commission and Council and only those retail investors with sufficient financial knowledge and ability to bear losses are to be able to invest. After passing a "suitability test", a "retail client" (as defined in the MIFID II Directive) with a portfolio that does not exceed €500,000 will be able to invest up to 10% of that portfolio in securitisation positions (the initial minimum amount invested in securitisation positions will need to be at least €10,000). This provision places limitations on the type of investor in securitisations, without running into the potential problems caused by Parliament's original proposal.

Limitations on the Entities that can be SSPEs

The Council originally wanted the term SSPE to mean an entity, other than an originator or sponsor, established for the "sole" purpose of carrying out one or more securitisations. This requirement has been dropped and the compromise amendments omit the word "sole".

Parliament's Position provided that SSPEs could not be established in non-EU countries which failed to meet certain tests. The more general criteria proposed by Parliament regarding identifying the non-qualifying countries were not included in the compromise amendments i.e., those provisions preventing SSPEs from being established in non-EU countries that: are tax havens; lack effective exchange of information with foreign tax authorities; lack legislative, judicial or administrative transparency; or have no requirement for a substantive local presence. However, two of Parliament's tests survived in the trilogue compromise amendments: the non-EU country cannot be listed as a "Non-Cooperative Country and Territory" in the context of anti-money laundering; and must have signed an agreement with a Member State to share tax information.

Due Diligence Requirements for Institutional Investors

The Securitisation Regulation requires "institutional investors" (i.e. specified types of EU regulated entities), to carry out due diligence before investing in a securitisation position. These requirements essentially follow Council's Position and include requirements on the institutional investor to verify that: (a) if established in the EU, the originator, sponsor or original lender retains a material net economic interest in accordance with the risk retention requirements and that the risk retention is disclosed to the institutional investor; and (b) if established in a non-EU country, the originator, sponsor or original lender retains a material net economic interest of not less than 5% determined in line with the risk retention methodology in the Securitisation Regulation and discloses the risk retention to institutional investors.

EU institutional investors must therefore carry out due diligence on non-EU entities to ensure that they meet a retention requirement broadly equivalent to that imposed on EU established entities. Therefore, even if none of the originator, sponsor or original lender is established in the EU, and so none of them is subject to the EU's direct retention obligation or risk retention disclosure obligations, one of them will still need to comply with equivalent requirements in order for such EU institutional investors to be able to invest in the securitisation.

Disclosure Requirements on Investors - Not Included

Parliament's proposed amendments included a requirement on a secondary market investor in a securitisation to make information available to its competent authority, including that in respect of its beneficial owner, and that regarding the size of its investment and to which tranche of the securitisation it relates. It was however pointed out that such an obligation could deter investors from investing in the EU securitisation market. As a consequence, the compromise agreed in trilogue did not include this amendment.

Securitisation Repository Provisions

Parliament proposed the establishment of securitisation repositories to which prescribed information relating to the securitisation is to be provided by the originator, sponsor and SSPE of a securitisation. The repositories are to be registered with the European Securities and Markets Authority ("**ESMA**"). The data repository system is based on similar repository regimes in the European Market Infrastructure Regulation[7] (in respect of derivatives) and the Securities Financing Transactions Regulation[8]. The Commission did not object to such a system, but wanted to ensure that these repository proposals did not have a dissuasive effect on issuers or investors by creating considerably higher costs without corresponding benefits.

A framework for a system of data repositories, authorised and supervised by ESMA, was agreed in trilogue. Much of the detail of the repository regime will be determined by Regulatory Technical Standards ("**RTS**") to be drafted by ESMA. The RTS will set out the detail of the repository registration process and of the procedures for the collection of data relating to the securitisation to be reported to the repository. ESMA is to publish on its website a list of registered securitisation repositories.

Reporting Exemption for Private Transactions

The trilogue agreement provides recognition to the legal protections regarding the protection of confidential information in the reporting obligations and exempts private transactions from the repository reporting requirements.

The trilogue agreement was that it is appropriate to exempt private securitisations from the requirement to notify transaction information to a securitisation repository, because private securitisations allow parties to enter into securitisation transactions without disclosing to the market and to competitors sensitive commercial information in relation to the transaction (e.g. without disclosing that a company needs funding to expand production or that a firm is entering a new

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[7] 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.

[8] Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012

market) and/or in relation to the underlying assets (e.g. regarding the type of trade receivable generated by an industrial firm). In those cases, investors are in direct contact with the originator and/or sponsor and receive the information necessary to perform their due diligence directly from them.

Ban on Re-securitisation

Parliament's Position provided that the underlying exposures used in a securitisation would not be able to include securitisation positions. The Council was unhappy about such a complete ban on re-securitisation and suggested carving out certain transactions that might be inadvertently affected. The Commission also did not think that a prohibition was essential. However, Parliament considered this to be an important point.

The compromise agreed at trilogue included this ban on re-securitisation, subject to exceptions for: (a) any securitisation the securities of which were issued before the date of application of the Securitisation Regulation; (b) any securitisation to be used for specified "legitimate purposes" (such as winding-up scenarios) subject to approval by the relevant national regulator; and (c) Asset Backed Commercial Paper ("**ABCP**") programmes.

STS Securitisations

The Securitisation Regulation sets out the criteria for "simplicity", "transparency" and "standardisation" that must be fulfilled in order to satisfy the "STS" classification. It also specifies the requirements for ABCP STS securitisations.

STS Securitisations: No Third-Country Regime

Both Parliament and the Council had suggested amendments to the Commission Proposal as regards the parties in STS securitisations. Both wanted a requirement that the originator, sponsor and SSPE involved in an STS securitisation would need to be established in the EU. This requirement will appear in the final Securitisation Regulation.

Parliament had been prepared to allow an exception to this requirement where those parties were established in a non-EU country that the Commission had deemed to be equivalent. However, in the trilogue discussions the legislative institutions were reluctant to introduce an equivalence regime, which appears to be influenced by their not wishing to pre-empt Brexit discussions on equivalence. Instead, the Commission is due to report on the functioning of the Securitisation Regulation three years from its date of application, and that report shall assess whether an equivalence regime could be introduced for third country originators, sponsors and SSPEs in STS securitisations, taking into consideration international developments in securitisation. However, the failure to include a third country equivalence regime in the Securitisation Regulation itself is likely to result in the exclusion from the STS securitisation regime of securitisations that otherwise would be classified as STS securitisations.

STS Securitisations: Third Party Verification of STS Compliance

There was agreement in trilogue on the Council proposal permitting the use of third party verification of compliance with the STS criteria. However, the use of such third parties does not affect the liability of the originator, sponsor or SSPE in respect of their obligations under the Securitisation Regulation and does not affect the due diligence obligations imposed on institutional investors.

Sanctions - Negligence or Intentional Infringement

The Commission Proposal contained a provision empowering Member States to lay down rules establishing appropriate administrative and criminal sanctions for specified breaches of the Securitisation Regulation. Concerns had been voiced that this was expressed in terms of strict liability, which seemed likely to have the effect of deterring participants in the securitisation market. It has now been agreed in trilogue that this provision be limited to cases of "negligence or intentional infringement", in order to avoid punishing non-negligent inadvertent breaches, which is a welcome development for the industry.

Application of the Securitisation Regulation

The provisions of the Securitisation Regulation will apply to securitisations issued from the date of application of the regulation (with limited exceptions).

The CRR Amendment Regulation

Background to the CRR Amendment Regulation

The legislative process for the CRR Amendment Regulation was run in parallel to that for the Securitisation Regulation, as described above. It has also passed through the Council and Parliament and has been discussed in trilogue. There was generally less controversy about the proposals in the CRR Amendment Regulation, although the hierarchy of approaches (please see below) became a significant issue during trilogues.

The amendments set out in the CRR Amendment Regulation are intended to take into account the revisions to the securitisation framework published by the Basel Committee for Banking Supervision in December 2014 and their subsequent amendment to include alternative capital treatment for "simple, transparent and comparable" securitisations ("**STC Securitisations**") in July 2016 (the "**Revised Basel Securitisation Framework**")[9] (although there are some differences in approach between the Revised Basel Securitisation Framework and the CRR Amendment Regulation).

[9] "*Basel III Document– Revisions to the securitisation framework – Amended to include the alternative capital treatment for "simple, transparent and comparable" securitisations",* 11 December 2014 (rev. July 2016), http://www.bis.org/bcbs/publ/d374.pdf.

CRR Amendment Regulation: the Hierarchy of Approaches

The Revised Basel Securitisation Framework sets out a hierarchy of approaches for calculating regulatory capital to be held with respect to securitisation exposures in the banking book, starting with the Securitisation Internal Ratings-Based Approach (the "**SEC-IRBA**"), followed by the Securitisation External Ratings-Based Approach (the "**SEC-ERBA**") (if permitted in the relevant jurisdiction), and then the Securitisation Standardised Approach (the "**SEC-SA**"). The three approaches have also been modified to provide for lower risk weights for STC Securitisations.

The CRR Amendment Regulation also puts the SEC-IRBA at the top of the hierarchy. This approach may be used where an institution has permission to use the Internal Ratings-Based Approach in relation to exposures of the same type as those underlying the securitisation and where it is able to calculate regulatory capital requirements in relation to underlying exposures as if they had not been securitised ("K_{IRB}"), as part of the applicable formula (which will necessitate the institution having sufficient information to be able to do so).[10] The EBA is required to develop draft regulatory standards, within one year of the date of entry into force of the Regulation, specifying the conditions to allow the calculation of K_{IRB}, and, in an important concession to the industry, it will be possible to use proxy data where sufficient accurate or reliable data is not available.

In the event that the SEC-IRBA is not available, the CRR Amendment Regulation requires that the SEC-SA should be used, under which risk weights are required to be calculated using a supervisory formula, and using as an input the capital requirements that would be calculated under the Standardised Approach to credit risk if the underlying exposures had not been securitised.

If neither of those two approaches is available, the institution may be able to apply the SEC-ERBA. The SEC-ERBA is based on the relevant percentage specified for the external (or inferred) rating of the securitisation tranche in the applicable look-up table and, for securitisation exposures with long-term ratings, adjustments with respect to tranche maturity (with different percentages depending on whether the tranche is a senior or non-senior tranche), and for non-senior tranches, tranche thickness.

However, the CRR Amendment Regulation provides some exceptions to the requirement that the SEC-SA should be applied if the SEC-IRBA is not available, where the securitisation exposure is rated, or if an inferred rating may be used, as follows:

- for STS securitisations where the application of the SEC-SA would result in a risk weight higher than 25%;

[10] The CRR Amendment Regulation allows for the SEC-IRBA to be used where the securitisation position is backed by an IRB pool, or a mixed pool, provided that the institution is able to calculate K_{IRB} for a minimum of 95% of the exposure amount.

- for non-STS securitisations where the application of the SEC-SA would result in a risk weight higher than 25% or where the application of the SEC-ERBA would result in a risk weight higher than 75%;
- for securitisations backed by pools of auto loans, auto leases or equipment leases; and
- where institutions have notified their national regulator that they intend to apply the SEC-ERBA to their rated securitisation positions. (This is a new development appearing in the trilogue compromise. The EBA will be required to monitor the impact of these provisions, report annually to the Commission on its findings and issue guidelines with respect thereto).

In addition, regulators may prohibit institutions, on a case by case basis, from applying the SEC-SA if the risk weighted exposure amount resulting from that approach is not commensurate to the risks to the institution or financial stability (with particular regard to securitisations with complex and risky features, in the case of non-STS securitisations).

The Internal Assessment Approach will continue to be applicable with respect to unrated positions in ABCP programmes. Exposures to re-securitisations will be required to be calculated using the SEC-SA, modified to provide for higher risk weights. In the event that none of the above approaches is applicable, a risk weight of 1,250% will apply.

CRR Amendment Regulation: Capital Requirements for STS Securitisations

Regardless of which approach is used, the resulting risk weights for securitisation transactions will generally be considerably higher than under the current rules. The CRR Amendment Regulation follows the principle set out in the Revised Basel Securitisation Framework with respect to STC Securitisations, in providing that STS securitisations can benefit from lower regulatory capital requirements. As well as needing to be categorised as STS, such securitisation exposures will also need to meet certain additional requirements set out in the CRR Amendment Regulation, including a requirement (except in certain specified cases) that the exposure with respect to a single obligor does not exceed 2% of exposures within the pool or the ABCP programme, as applicable.

Under the SEC-IRBA and the SEC-SA, a floor of 10% will apply to the relevant risk weight for senior positions in STS securitisations, instead of 15%. In addition, for the SEC-IRBA, the supervisory parameter *p,* which forms part of the formula, includes a factor of 0.5. Under the SEC-ERBA, different look-up tables will apply for STS securitisations, and the relevant percentages in those look-up tables are now aligned in the compromise with those in the Revised Basel Securitisation Framework, in contrast with the previous drafts of the CRR Amendment Regulation which had higher percentages in the majority of cases. Under the SEC-SA, the supervisory parameter *p* which forms part of the formula will be 0.5 instead of 1.[11]

[11] The supervisory parameter *p* for re-securitisations is 1.5.

The CRR Amendment Regulation requires the Commission to provide a report within three years from the date of its entry into force including an assessment of the impact of the hierarchy of approaches and of the calculation of risk-weighted exposure amounts, on issuance and investment activity in the EU, and an assessment of the effects of these reforms on financial stability in the EU. The report shall also take into account international regulatory developments with respect to securitisation.

CRR Amendment Regulation: Application and Grandfathering

The CRR Amendment Regulation will apply to securitisations issued on or after the date of application of the regulation and to securitisations which are outstanding on that date. However, grandfathering of outstanding securitisations, using the existing CRR rules rather than the amended version, will be permitted for a period ending on 31 December 2019.

Next steps

Next steps in the Legislative Process

Final agreed texts still need to be published and the commentary above should be read with that in mind. The Securitisation Regulation and the CRR Amendment Regulation then need to be approved by the Council and also by the European Parliament in a plenary vote.

Once the legislative process has been completed, the Regulations will be published in the Official Journal of the European Union and will enter into force 20 days later. Being EU regulations, they will be directly applicable law across the EU, and will not need transposition into national law by EU Member States.

Regulatory Technical Standards and Application Date

RTS detailing various aspects of the new regime are to be published in due course. The full scope of the regime will not be known with certainty until these RTS are published. There had been some concern about the effect of uncertainty and the possibility for disruption in the market in the period from the date on which the Securitisation Regulation is to apply until the date on which the RTS are to apply. However, the application date for the Regulations is now expected to be 1 January 2019. It is to be hoped that this will allow time for RTS to be published before the application date of the Regulations.

Conclusion

The European securitisation industry had had significant concerns about a number of Parliament's proposals, which were widely viewed as having the potential to cause significant damage to the EU securitisation market. This would have been contrary to the original intention of the Commission Proposal. Market participants will, no doubt, welcome the compromises agreed in trilogue, particularly as regards the modification of Parliament's more controversial proposed amendments to

the Securitisation Regulation. Whilst the full effect of the new regime will not be clear for some time yet, significant progress has now been made in developing a new legal framework for securitisation in the EU.

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