

## **EU EXIT INSTRUMENT: THE TECHNICAL STANDARDS (SECURITISATION) (EU EXIT) (No. 1) INSTRUMENT 2020**

### **Powers exercised**

- A. The Prudential Regulatory Authority (the “PRA”), being the appropriate regulator within the meaning of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (the “Regulations”), having carried out the consultations required by regulation 5 of the Regulations and with the approval of the Treasury, makes this instrument in exercise of the powers conferred by regulation 3 of the Regulations.

### **Pre-conditions to making**

- B. The PRA and the FCA are the appropriate regulators for the EU Risk Retention Regulation.
- C. The PRA proposes to exercise the power in regulation 3 of the Regulations to modify the EU Risk Retention Regulation.
- D. The FCA has been consulted on the modifications contained in the Annex to this instrument in accordance with regulation 5 of the Regulations and has consented to the modifications contained in the Annex to this instrument in accordance with regulation 3(2) of the Regulations.
- E. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

### **Interpretation**

- F. In this instrument –
- (a) “the 2018 Act” means the European Union (Withdrawal) Act 2018;
  - (b) “the 2020 Act” means the European Union (Withdrawal Agreement) Act 2020;
  - (c) “the EU Risk Retention Regulation” means Commission Delegated Regulation 2020/... of ..... 2020 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards specifying the requirements for originators, sponsors and original lenders relating to risk retention and partially repealing Commission Delegated Regulation (EU) No 625/2014, as it forms part of domestic law by virtue of section 3 of the 2018 Act;
  - (d) “the FCA” means the Financial Conduct Authority; and
  - (e) “IP completion day” has the meaning given in section 39 of the 2020 Act.

### **Modifications to the EU Risk Retention Regulation**

- K. The PRA makes the modifications in the Annex to the EU Risk Retention Regulation.

### **Commencement**

- L. This instrument comes into force on IP completion day.

### **Citation**

- M. This instrument may be cited as the Technical Standards (Securitisation) (EU Exit) (No.1) Instrument 2020.

### **By order of the Prudential Regulation Committee**

[ ] 2020

## Annex

### RISK RETENTION REQUIREMENTS FOR ORIGINATORS, SPONSORS AND ORIGINAL LENDERS

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#### 1 MODIFICATIONS TO EU REGULATION 2020/...

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- 1.1 In this Annex new text is underlined and deleted text is struck through.
- 1.2 Commission Delegated Regulation 2020/... of ..... 2020 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards specifying the requirements for originators, sponsors and original lenders relating to risk retention and partially repealing Commission Delegated Regulation (EU) No 625/2014, as it forms part of domestic law by virtue of section 3 of the 2018 Act, is amended as follows:
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#### *Article 1*

##### **Definitions**

For the purposes of this Regulation the following definitions apply:

...

- (f) 'financial holding company' and 'UK parent institution' have the meaning given in Article 4(1) of Regulation (EU) No 575/2013;
- (g) 'mixed financial holding company' has the meaning given in regulation 1(2) of the Financial Conglomerates and Other Financial Groups Regulations 2004;
- (h) 'third country' means a country other than the United Kingdom.

...

#### *Article 4*

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

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- (2) Where an entity other than a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 acts as a retainer through a synthetic or contingent form of retention, the interest retained on a synthetic or contingent basis shall be fully collateralised in cash and held on a segregated basis as client funds, with adequate arrangements made to safeguard the rights of clients and prevent the use of client funds for the entity's own account as referred to in Article 16(9) of Directive 2014/65/EU of the European Parliament and of the Council.

...

#### *Article 14*

##### **Retention on a consolidated basis**

A mixed financial holding company ~~established in the Union within the meaning of Directive 2002/87/EC~~, a UK parent institution or a financial holding company established in the United Kingdom ~~Union~~ satisfying, in accordance with Article 6(4) of Regulation (EU) 2017/2402, the retention requirement on the basis of its consolidated situation shall, in the case the retainer is no longer included in the scope of supervision on a consolidated basis, ensure that one or more of the remaining entities included in the scope of supervision on a consolidated basis assumes exposure to the securitisation so as to ensure the ongoing fulfilment of the requirement.

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#### *Article 16*

##### **Assets transferred to the SSPE**

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- (2) For the purpose of Article 6(2) of Regulation (EU) 2017/2402, and where no clear prior communication to investors or potential investors has taken place regarding a transfer to the SSPE of assets whose credit-risk profile is higher than that of comparable assets held on the balance sheet of the originator ~~as referred to in recital No 11 of that Regulation~~, the assessment of the intent of the originator shall take into account the actions the originator has taken to comply with that Article. These shall include any policies and procedures that the originator has put in place and applies internally in order to ensure that the securitised assets would reasonably have been expected not to lead to higher losses than the losses on comparable assets held on its balance sheet.

...

#### *Article 17*

##### **Entry into force**

...

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