

Group Briefing

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Simple, Transparent and Standardised (STS) Securitisations: What you need to know

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Europe Women in Business Law Awards

This document contains a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

The new EU Securitisation Regulation will apply from 1 January 2019. It will significantly reform the EU securitisation market, and will introduce a framework for “*simple, transparent and standardised*” (STS) securitisations.

This briefing sets out what you need to know about the new STS securitisation framework. We are publishing a separate briefing that focuses on the general reforms that the new Securitisation Regulation will introduce.

BACKGROUND

Almost two years after the European Commission published its proposals to reform the EU securitisation market, and following lengthy negotiations, provisional agreement was finally reached between the Commission, the EU Council and the European Parliament on 30 May 2017 on the proposed new Securitisation Regulation, and related amendments to the Capital Requirements Regulation. For more information, read our briefing: [Securitisation Reform: Agreement reached](#).

Both Regulations were then published in the Official Journal in December 2017. They will apply from 1 January 2019.

STS SECURITISATIONS

The new Securitisation Regulation provides a framework for an ‘STS securitisation’ designation for short-term asset-backed commercial paper (ABCP) securitisations and for term securitisations.

Post 1 January 2019, securitisations may opt-in, subject to meeting certain eligibility criteria, if they want to use the designation ‘*STS securitisation*’. Securitisations where the securities are issued before 1 January 2019 may still apply for the ‘*STS securitisation*’ designation if they meet the relevant eligibility criteria at the time of notification to ESMA (see below regarding the notification obligation).

Certain securitisations cannot look for the ‘*STS securitisation*’ designation, including CMBS, synthetic securitisations and securitisations with managed portfolios of assets (i.e. CLOs). Securitisations where the underlying pool comprises non-performing loans or self-certified mortgages are also

ineligible, as are re-securitisations.

CRITERIA

Originators, sponsors and securitisation special purpose entities (SSPEs) may use the designation 'STS' or '*simple, transparent and standardised*', or a similar designation that refers directly or indirectly to those terms, for a securitisation where:

- » it meets all of the criteria set out in Chapter 4 of the new Securitisation Regulation,
- » ESMA has been notified, and
- » ESMA has added the securitisation to an official list of '*STS securitisations*' that it will maintain on its website.

A securitisation cannot be designated as an '*STS securitisation*' unless the originator, sponsor and SSPE are established in the EU.

The eligibility criteria that an ABCP securitisation and a term securitisation must meet are broadly similar, however the criteria for ABCPs have been adapted to reflect the specificities of short-term securitisation, and distinguish between transaction, sponsor and programme-level criteria. The criteria for both types of securitisation focus more on the structure of the transaction, than on the quality of the underlying assets, and many of the criteria are quite vague. The Level 2 measures being prepared by the EBA and ESMA will go some way towards clarifying some of those criteria. Criteria include full compliance with transparency, credit-granting and retention obligations and restrictions on the nature of the underlying exposures. There are also criteria relating to the structure of the securitisation.

WHY APPLY FOR AN 'STS SECURITISATION' DESIGNATION?

The overall impact of STS securitisations on market liquidity remains to be seen. However, from an investor perspective,

while they will still have due diligence obligations, they may derive comfort from the knowledge that the structure of the securitisation has rigorously examined to attain the 'STS' label. Exposures to STS securitisations may also receive favourable regulatory capital treatment under the amended Capital Requirements Regulation if certain conditions are met.

WHO VERIFIES COMPLIANCE WITH STS ELIGIBILITY CRITERIA?

An originator, sponsor or SSPE can avail of the services of an authorised third party verification agent to check whether the securitisation meets the STS eligibility criteria. However, the use of such service does not affect the liability of the originator, sponsor or SSPE i.e. the originator, sponsor and SSPE remain responsible for ensuring compliance with the STS eligibility criteria when making the notification to ESMA. Equally, the use of such a service does not relieve institutional investors of their due diligence obligations.

When carrying out due diligence prior to holding a securitisation position, institutional investors are, where the securitisation in question is an STS securitisation, required to assess compliance with the eligibility criteria set out in Chapter 4 of the new Securitisation Regulation. They are allowed to "*rely to an appropriate extent on the STS notification...and on the information disclosed by the originator, sponsor and SSPE ...without solely or mechanistically relying on that notification or information*".

WHO NOTIFIES ESMA?

In the case of term securitisations, the originators and sponsors must jointly notify. For ABCP securitisations, only the sponsor must notify. The notification to ESMA must set out how the relevant STS eligibility criteria have been met. Originators and sponsors must also

notify their competent authorities, and agree between themselves who should be designated as the key point of contact. The originator and sponsor must also notify ESMA and their competent authorities when a securitisation designated as an '*STS securitisation*' no longer meets the criteria for such a designation.

The STS notification to ESMA is also one of the items that must be disclosed by the originator, sponsor and SSPE as part of the detailed information they must disclose to holders of securitisation positions, competent authorities and (upon request) potential investors. Equally, if the securitisation no longer meets the eligibility criteria, that is a matter that must be disclosed by the originator, sponsor and SSPE without delay.

NEXT STEPS

ESMA and the EBA have been mandated to draft a number of Level 2 and Level 3 measures in relation to the new framework. ESMA has published a [Final Report](#) specifying the information that the originator, sponsor and SSPE are required to provide to ESMA to comply with their STS notification requirements, and specifying draft notification templates. ESMA has also published a [Final Report](#) dealing with the authorisation of firms providing STS verification services, and the EBA has published its [final draft standards on the homogeneity of the underlying exposures in securitisation](#) (i.e. the requirement that the underlying pool in an STS securitisation be homogenous in terms of asset type). These drafts are with the Commission for approval.

The EBA has also consulted on [draft guidelines on the STS criteria for ABCP securitisation](#), and on [draft guidelines on the STS criteria for term securitisations](#).

We will issue further updates as these measures are finalised.

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