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UK Securitisation Regulation reforms – responses to the consultations on draft securitisation rules published by the Prudential Regulation Authority (the "PRA") and the Financial Conduct Authority (the "FCA")

On behalf of the Association for Financial Markets in Europe ("**AFME**"),[1] UK Finance[2] and CREFC Europe[3] (together, the "**Joint Associations**") and their respective members, we welcome the opportunity to respond to the PRA and the FCA consultations on the draft rules relating to securitisation, namely (i) PRA CP15/23 of 27 July 2023[4] setting out the draft PRA Rulebook: CRR firms, non-CRR firms, Solvency II firms and non-Solvency II firms: Securitisation Instrument [2024] (the "**PRA CP**" and the "**PRA Draft Rules**", respectively, and together the "**PRA Consultation Materials**"), and (ii) the FCA CP23/17 of 7 August 2023[5] setting out the draft FCA Securitisation (Smarter Regulatory Framework) Instrument 2023, as supplemented by the addendum[6] published by the FCA on 16 October 2023 (the "**FCA CP**" and the "**FCA Draft Rules**", respectively, and together, the "**FCA Consultation Materials**"). We will refer to the PRA Consultation Materials and the FCA Consultation Materials as "**Consultation Materials**" for ease of reference.

[1] AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. AFME advocates stable, competitive, sustainable European financial markets that support economic growth and benefit society.

[2] UK Finance is the collective voice for the banking and finance industry. Representing more than 300 firms, UK Finance acts to enhance competitiveness, support customers, and facilitate innovation.

[3] The Commercial Real Estate Finance Council (CREFC) Europe is an industry association representing commercial real estate (CRE) debt providers and the wider European CRE finance market. CREFC Europe promotes well-functioning, responsible and sustainable markets that are appropriately transparent and liquid, serving both institutions investing capital (their own or on behalf of others) and CRE businesses borrowing it (large or small), without unduly threatening financial stability, and believes that a suitably regulated European CRE debt securitisation market would contribute towards that outcome.

[4] https://www.bankofengland.co.uk/prudential-regulation/publication/2023/july/securitisation

[5] https://www.fca.org.uk/publications/consultation-papers/cp23-17-rules-relating-securitisation

[6] https://www.fca.org.uk/publication/consultation/cp23-17-addendum.pdf

Given that the UK Securitisation Regulation reforms encompass a series of tightly interconnected draft instruments published for consultation in summer 2023, this AFME response paper brings together comments and observations of the AFME members on both the PRA Consultation Materials and the FCA Consultation Materials. In addition, the Joint Associations believe that both the PRA Consultation Materials and the FCA Consultation Materials should be considered holistically together with the Securitisation Regulations 2023 draft statutory instrument (the "**SI**") published by HMT on 11 July 2023[7] and, in that regard, the Joint Associations would like to draw your attention to its response to the SI submitted to HM Treasury ("**HMT**") on 11 September 2023[8] (the "**AFME Response to HMT**").

As already noted in the AFME Response to HMT, members of the Joint Associations are encouraged by the opportunities presented by the smarter financial services regulatory framework ("**Smarter Regulatory Framework**") and the implementation of measures under the Financial Services and Markets Act 2023 (the "**FSMA 2023**") to adapt the UK securitisation regulatory framework to the rulebook model of regulation under the Financial Services and Markets Act 2000 (the "**FSMA 2000**"). Members of the Joint Associations are hoping for a successful realisation of the aims of the HMT report on the review of the UK Securitisation Regulation of December 2021[9] (the "**HMT Report of December 2021**") and the policy intentions articulated in the HMT policy note that accompanied the SI, as well as in the PRA CP and the FCA CP. We would also like to emphasise that the Joint Associations welcome the objectives of HMT, the PRA and the FCA of supporting and developing securitisation markets in the UK through the adoption of the SI and the rules made thereunder by the FCA and the PRA with a view to increasing securitisation's contribution to the real economy and the competitiveness of the UK among other international securitisation markets and thus securitisation becoming an integral building block for advancing the new secondary international competitiveness and growth objective under FSMA 2023.

By way of an introduction on the content of this letter, the Joint Associations have sought to provide both certain general observations and responses to the specific questions posed in the Consultation Materials (including comments on certain overlapping areas where the industry would like to see greater consistency between the drafting of the PRA Draft Rules, the FCA Draft Rules and the SI). These are grouped into the following categories: (i) general observations on the framework as a whole, and the practical aspects of its implementation; (ii) issues relating to investor due diligence; (iii) issues relating to risk retention; (iv) issues relating to transparency and reporting; (v) members' views on the potential reform to the definition of "public" securitisation; (vi) comments relating to provisions relating to credit granting standards; (vii) certain considerations relating to re-securitisation; (viii) members views on the STS regime; and (ix) comments on some of the key definitions. Annex A maps the specific questions raised in the FCA CP to the relevant sections of this letter. Annex B provides some non-exhaustive examples relating to "lost" recitals of the UK Securitisation Regulation regime. We have also included a table of contents for ease of navigation.

The Joint Associations would like to thank the PRA and the FCA again for the opportunity to provide comments on the Consultation Materials. We would be happy to answer any further questions that you may have.

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[7] https://www.gov.uk/government/publications/securitisation-regulations-2023-draft-si-and-policy-note

[8] https://www.afme.eu/Portals/0/DispatchFeaturedImages/AFME%20Response%20-%20Securitisation%20Regulations%202023%20Draft%20SI.pdf

[9] HMT Report of December 2021: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1040038/Securitisation_Regulation_Review.pdf

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1. GENERAL OBSERVATIONS

1.1 Status of EU level 3 measures and of recitals used for interpretation purposes

As noted in the AFME Response to HMT, due to the diversity and complexity of the securitisation market and its regulation, market participants frequently rely on a combination of previous regulatory guidance[10] (which may, in some cases, pre-date the current version of legislation by a considerable time), as well as market practice, to determine whether transactions, or certain features of transactions, are compliant with the applicable regulatory requirements. The Joint Associations support a more flexible approach to regulation of securitisations and acknowledge that the Smarter Regulatory Framework necessitates a wholesale replacement of the securitisation regulatory framework in the UK. However, the Joint Associations are concerned that too mechanistic an approach to replacement of the existing rules might inadvertently lead to additional uncertainty, which does not exist today, for UK in-scope entities with regard to the interpretation of rules in respect of certain products and their structural features which is currently based on legacy regulatory guidance not being expressly "on-boarded" onto the Smarter Regulatory Framework.

In that regard, the Joint Associations note that, when the UK left the EU, in addition to explicitly "onshoring" specified existing EU level 3 prudential and non-prudential measure relating to securitisation[11] both the FCA and the PRA made statements indicating broadly the ongoing relevance of EU non-legislative materials to "onshored" EU legislation in so far as they remained relevant in the UK,[12] which formed a helpful bridge supporting an uninterrupted and continuous application of rules which were not expressly altered as part of the regulatory changes.

The Joint Associations would welcome a similar form of a policy statement from both the PRA and the FCA in the feedback statements on the outcome of the PRA CP and the FCA CP, respectively, which would acknowledge the existence and continuing applicability of previously issued non-legislative materials and guidance, both by EU and UK regulators, unless the new regulatory framework created by the SI, the FCA Draft Rules and the PRA Draft Rules expressly alters the position as it exists under the relevant guidance today. Such policy and feedback statements would help to ensure the certainty and consistency of treatment of existing (and indeed new) securitisation positions and ultimately serve as promoting one of the main ambitions of the Smarter Regulatory Framework, which is to secure the UK's position as a global financial hub, whilst minimising unnecessary disruption to the industry.

Similar to Level 3 measures, the recitals to the EU Securitisation Regulation and level 2 legislation made thereunder (including certain pre-2019 level 2 legislation that applies under the transitional provisions), that are currently part of the retained EU law, form an important source of interpretation guidance. We appreciate the UK regulators' efforts to preserve provisions embedded in recitals that are, in fact, operational, but note that the interpretational value of the recitals goes beyond this. We have included some non-exhaustive examples of "lost"

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[10] This includes a broad range of pre-2019 and post-2019 EU level 3 measures including Q&As, guidelines, recommendations, reports and opinions.

[11] By way of (non-exhaustive) examples, these included the EBA STS guidelines, version 6 of the ESMA Q&As of 10 October 2020 and the ESAs statement of 30 November 2018 (see: https://www.handbook.fca.org.uk/document/l3g?dossier=sr&text=), the EBA guidelines on SRT and implicit support (see Appendix 2: https://www.bankofengland.co.uk/-/media/boe/files/paper/2021/interpretation-of-eu-guidelines-and-recommendations-boe-and-pra-approach-sop-november-2022.pdf).

[12] FCA, "Brexit: out approach to EU non-legislative materials" (October 2020) https://www.fca.org.uk/publication/corporate/brexit-our-approach-to-eu-non-legislative-materials.pdf accessed on 30 October 2023; Bank of England and PRA, "Bank of England and PRA Statement of Policy: Interpretation of EU Guidelines and Recommendations: Bank of England and PRA approach after the UK's withdrawal from the EU" (August 2022) https://www.bankofengland.co.uk/-/media/boe/files/paper/2021/interpretation-of-eu-guidelines-and-recommendations-boe-and-pra-approach-sop-november-2022.pdf accessed on 30 October 2023.

recitals which are sometimes referred to in transaction analysis and advice in Annex B to this letter.

As with the previously issued non-legislative materials and guidance, the Joint Associations would welcome a policy statement from the PRA and the FCA in the feedback statements on the outcome of the PRA CP and the FCA CP, respectively, acknowledging the existence and continuing relevance of recitals, unless the new regulatory framework created by the SI, the FCA Draft Rules and the PRA Draft Rules expressly alters the position as it exists under the relevant guidance today.

1.2 Uniformity of drafting of rules

As the PRA and the FCA know, prior to 2019, investor due diligence requirements for securitisation (including those relating to risk retention and transparency/reporting) were spread across a number of regulatory frameworks applicable to different type of institutional investor,[13] with similar rules drafted slightly differently in the relevant sectoral legislation. That position resulted in additional compliance costs and negotiation pressures, with investors being left potentially exposed to the risk of interpretation of inconsistencies in the sell-side covenant package. The introduction of the EU Securitisation Regulation regime which, among other things, harmonised the position across due diligence requirements applicable to different types of investors was generally well received by the industry, and this was acknowledged by the HMT Report of December 2021.

It appears therefore to be a step backwards now to see, in the PRA Draft Rules and the FCA Draft Rules, a lack of harmonisation in drafting of the same provisions, where no policy differences are articulated as between the PRA and the FCA. Although in many instances the differences in drafting may be minor and/or non-material, the apparent lack of coordination between the PRA and the FCA drafting is unexpected, unhelpful, and makes the process of analysing the recast framework significantly more cumbersome and complex.

In practice, for most (if not all) relevant securitisations, the requirements of the PRA and the FCA rulebooks will need to be considered by both the sell-side and the buy-side parties, including from the perspective of supporting liquidity of securitisation positions. Any fragmentation of requirements applicable to different types of securitisation investors would bring back the same problems as existed prior to 2019, including increased compliance costs, inefficiencies and potential difficulties with liquidity and distribution. Furthermore, the Joint Associations' members would welcome if the rules could be set up in the same logical order as they currently are to assist with cross-referencing in disclosure, transaction documentation and legal advice and avoid unnecessary additional compliance costs. The Joint Associations' members believe that absent policy differences, full harmonisation of drafting between the rules made by the PRA and the FCA (as well as, where relevant, the SI) would be a smart way of taking forward the securitisation reforms.

We have included in this letter some specific observations and comments on the different drafting and identified certain areas where such drafting differences give rise to interpretational uncertainty or other issues to illustrate this point. However, such examples do not represent an exhaustive list of all areas where more harmonisation in drafting is needed. Finally, as a general observation, it would be helpful to have consistency in how the obligations are described in the PRA and FCA rules – the logic between using "shall" as opposed to "must" or "may" is not clear to the industry, and the members would welcome consistency and use uniform drafting across the board.

[13] EU CRD/CRR; EU Solvency II; EU AIFM/AIFMR regimes.

1.3 Grandfathering and transitional provisions

We note the absence (other than mirroring transitional provisions of the currently applicable UK Securitisation Regulation in respect of pre-2019 securitisations and, via the SI, the grandfathering of STS requirements) of grandfathering provisions for existing securitisations, in relation to the changes of regulation proposed in the consultations. We imagine that the FCA and PRA regard the new rules as sufficiently similar to the existing rules such that they do not present compliance challenges, and/or, where they diverge, as offering welcome clarify and proportionality relative to the existing rules. We agree that the new rules do offer welcome clarify and proportionality in certain respects and that explicit new restrictions (such as the new restriction on delegation of due diligence obligations to occupational pensions schemes) are few. In an area as complex as securitisation regulation, however, any such generalisation is hard to sustain at a granular level. For example, the PRA itself indicates – in relation to the sole purpose test – that while the proposed specification is "*broadly in line with current market expectations*" some originators may "*find it more difficult to argue that they are compliant*" (see paragraph 7.29 of the PRA CP). The detailed analysis for individual transactions may turn on drafting specificities in text the wording of which has changed, or depend on Level 3 guidance and/or recitals that are not carried over (though, as indicated above, we request that guidance is provided confirming their continuing relevance).

In the interests of avoiding 'retroactive' application of new rules, thereby undermining legal certainty and market participants' legitimate expectations, we request that the PRA and FCA provide maximum flexibility to market participants in this respect. This could involve, for example, permitting elective grandfathering for the life of the transaction, or transition to the new rules, on a transaction-by-transaction, rule-by-rule, basis, by market participants, or by providing a statement to the effect that a proportionate approach will be taken to enforcement of the new rules, where the relevant divergence is sustainable by reference to the existing rules.

We note that the changes in relation to disclosure and due diligence envisaged for subsequent consultation by the PRA and FCA are likely to involve more dramatic changes to the existing rules and that the need for effective and flexible (including permanent) grandfathering will be even more pronounced in that context.

1.4 Timeframe for implementation of the recast framework and the cost-benefit analysis

The UK Securitisation Regulation reforms will require buy- and sell-side UK institutions to conduct a thorough review of both the text of the new rules and of their existing internal policies and procedures, reporting systems and processes. Based on that review, the firms will need to identify and implement necessary updates and provide personnel training. Given the wholesale nature of UK reforms, this is by no means a straightforward exercise. The Consultation Materials helpfully acknowledge the need for the familiarisation with the recast framework and for follow up internal reviews. [14] However, some of the assumptions made in the Consultation Materials about the extent of such reviews, updates and re-training do not appear properly to acknowledge the complexity of the task at hand.

Although the recast of the existing securitisation framework does not involve a substantive re-write of the rules, it does require adaptation to the new format in which the rules are presented (i.e. the SI and rulebooks instead of a single document with all the relevant rules in it, and no duplication or differences in the text of the same rule which have to be assessed on the substance before a conclusion can be made that they are irrelevant). The mere fact that the model of regulation is changing means that there is no simple or straightforward way easily to identify

[14] The FCA CP assumes that that "*20 compliance staff at each firm will read the text*" and that it is expected that relevant firms will "*conduct a legal review of the proposals and a gap analysis to check their current practices against expectations*" and that the firm will use in-house counsel to understand changes, rather than employing external legal advice.

whether the rules are changing, or indeed, map out where the existing rules have migrated. Even the seemingly simple task of running blacklines to identify the changes is not straightforward as the new framework is no longer a single document/source, and blacklining requires sufficient familiarity with the substance of the relevant requirements. As part of their review and assessment, in scope firms will need to familiarise themselves with all changes introduced by the reforms, irrespective of whether or not they are material, and update internal policies and procedures both for new legislative references and any change in the applicable requirements. The latter is further be complicated by the fact that there are duplications and differences in how the same rules are drafted, the impact of which will need to be properly assessed. Furthermore, given that some aspects of the existing policies will have been developed by reference to currently available level 3 measures or recitals, the importance of policy statements discussed under section 1.1 of this letter is even more pronounced. If the phase one of the UK Securitisation Regulation reforms does not provide sufficient clarity on the status of such level 3 measures and recitals (as requested in this letter), this could lead to significantly more work (and material additional costs) to ensure ongoing regulatory compliance.

Finally, while some of the work which the Consultation Materials assumes would be done in-house would indeed be dealt with in that way, it may not be an option for all firms (and especially, for smaller market participants who may not have a significant number of designated compliance staff sufficiently familiar with the rules to undertake such an exercise). For all the reasons discussed above, the time and the costs involved in the review and update of the internal policies and procedures, including those associated with engagement of external counsel, should not be underestimated.

As the work on the review and update can only properly commence once the legislative changes and the draft rules are finalised, the Joint Associations would like to request that the PRA and the FCA allow **at least up to six months** implementation period, starting from the date on which the phase one rules start to apply, for the firms to complete their necessary reviews, updates and training.

1.5 Scope of application to originators and original lenders

The UK Securitisation Regulation regime imposes obligations on originators, sponsors, original lenders, SSPEs and institutional investors. The relevant definitions are broadly drafted, potentially capture multiple entities (including, in the case of original lenders and limb (a) originators, other members of a corporate group) and, in the case of original lenders and limb (a) originators (originators being the default retainers in the absence of agreement), entities that have no involvement with, and are not even aware of, a securitisation. Pragmatically, the market interprets the scope of these definitions as limited to entities that are involved in a securitisation. Clarification to that effect would be helpful, either as a general clarification regarding the scope or (noting the relevance of the originator definition to the CRR obligations around significant risk transfer) on an obligation by obligation basis.

1.6 Scope of application in relation to correlation trading

While correlation trading (as defined)[15] continues to benefit from a dedicated carve out from the risk retention requirement, other requirements of the UK Securitisation Regulation regime, in particular, the due diligence and transparency requirements, are difficult, if not impossible, to apply, if interpreted as applicable to such transactions. We also refer to our separate comments in section 2.7 below relating to the need to consider previously available (but now omitted)

[15] A carve-out applies under Article 6(6) of the UK Securitisation Regulation for "*transactions based on a clear, transparent and accessible index, where the underlying reference entities are identical to those that make up an index of entities that is widely traded, or are other tradable securities other than securitisation positions*".

guidance under the pre-2019 EU CRR RTS[16] that provided, subject to certain conditions, for deemed satisfaction of the due diligence requirements for this type of transactions. The UK Securitisation Regulation reforms present a great opportunity to fix this omission and to further clarify that this type of transaction is exempt from the transparency requirements. Therefore, it would be helpful if the PRA and FCA could confirm the exemption from, or deemed satisfaction of, the investor due diligence and transparency requirements for this type of transaction under the UK Securitisation Regulation. Importantly, this should be without prejudice to the status of such transactions as securitisations, or otherwise, for *prudential* purposes.

[16] Commission Delegated Regulation (EU) No 625/2014 (see Article 20): https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0625

2. INVESTOR DUE DILIGENCE ***(RELEVANT TO BOTH THE PRA CP AND THE FCA CP)***

The Joint Associations welcome the amendments to the investor due diligence provisions which are being introduced with this round of consultations, including those which clarify and the rules on delegation of investor due diligence and introduce a more principles-based and proportionate approach to verification of documentation and reports provided in connection with securitisations. These amendments would certainly be helpful in providing additional certainty and flexibility to UK investors and improving their ability to invest in third country securitisations more easily and to build more diversified portfolios of investments for their clients. Although investor due diligence provisions may need to be looked at again as part of the second round of consultations (specifically, in the context of further reforms to the transparency and reporting provisions and the reforms to the definition of "private"/"public" securitisation), the Joint Associations would like to make some more granular points as part of its feedback to the Consultation Materials as outlined below.

As a general observation, the Joint Associations would like to repeat its comment on consistency of the drafting as between the PRA Draft Rules and the FCA Draft Rules which is discussed in section 1.2 above. Unless there is a difference in policy approach, the same wording should be used in both rulebooks to avoid unintentionally inconsistent application.

2.1 Trigger for application of investor due diligence

The trigger for the application of the investor due diligence requirements under the PRA Draft Rules, the FCA Draft Rules and the SI continues to be drafted (as is the case under the EU Securitisation Regulation and the UK Securitisation Regulation) by reference to "holding a securitisation position". The industry will welcome further guidance on the interpretation of this trigger and whether, as was the case prior to 2019, it should be interpreted as being limited to exposures to the *credit risk* of a securitisation position (or securitised exposures), thereby exempting certain transaction parties from the application of the investor due diligence requirements in certain circumstances.

The pre-2019 EU CRR risk retention RTS, helpfully clarified that where an institution acted "*as a credit derivative counterparty or as a counterparty providing the hedge or as a liquidity facility provider with regard to a securitisation transaction*" it was "*deemed to become exposed to the credit risk of a securitisation position" only "when the derivative, the hedge or the liquidity facility [assumed] the credit risk of the securitised exposures or the securitisation positions*".[17] Credit risk on the securitised exposures/securitisation positions would generally not be assumed by the counterparty to a currency or interest rate swap, but would be assumed by – for example - the counterparty to a total return swap/TRS on the securitised exposures providing credit enhancement to the securitisation. This guidance provided welcome clarification that, where a derivative, hedge or liquidity facility did not assume the credit risk of the securitised exposures/securitisation positions, the relevant counterparty was not required to comply with applicable due diligence obligations. It would be helpful if the PRA and FCA could confirm that this remains the case. Importantly, this guidance should be without prejudice to the status of such exposures for prudential purposes.[18]

2.2 Pre-pricing information

(a) <u>Meaning of "pricing" for certain private securitisations</u>: the Joint Associations note that the rules articulated in SECN 4.2.1R(1)(e)(4), (6) and (7) of the FCA Draft Rules and Chapter 2, Articles 5(1)(e)(iv), (vi) and (vii) of the Securitisation Part of the PRA Draft

[17] See Article 2(1) and Recital 2: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.174.01.0016.01.ENG

[18] See for example Basel CRE 40.4, 40.35, 44.16, and Articles 4(1)(62), 5(1) and 256(4) CRR.

Rules require the provision of draft or initial form documents before pricing. This is of course a helpful and welcome clarification which expressly acknowledges the existing market practice for public transactions acquired by investors as part of the primary distribution. The Joint Associations would welcome a further minor clarification to these rules as part of the current round of consultations to clarify their application to private securitisations such as bilateral and syndicated loan/note facilities. These transactions technically do not have the concept of "pricing" as such but instead come into existence and "commit" an investor to invest when the relevant documentation is signed (as opposed to the point of pricing). Given the nature of such transactions, there are usually multiple drafts of transaction documents which are heavily negotiated with the investors before the transaction comes into existence. On that basis, the requirement to provide initial or final drafts of the transaction documents *prior to signing* for this type of transactions would be a more sensible approach.

(b) Secondary markets: Additionally, the Joint Associations would like to flag that although the new rules have been helpfully clarified for primary trades in the manner referred to above, the requirement to verify that certain information has been provided prior to pricing does not have much value or benefit in the context of secondary trades. For this type of investment, the transaction documentation (and often, also deal reports) already exists and what has been provided prior to pricing or shortly after closing is of no relevance to an investor who buys in the secondary market as it would be required to do its own diligence of the position. The Joint Associations therefore believe that it would be helpful to clarify application of the rule to make it clear that the requirement to verify whether the relevant information has been provided prior to pricing, or shortly after closing, should be interpreted as referring to investor receiving the relevant information and materials prior to actual investments (and not requiring that investor to conduct due diligence on what has been provided prior to pricing).

The Joint Associations' members also believe that for secondary trades in securitisations with a UK manufacturer (or manufacturer in another jurisdiction with comparable sell-side obligations, such as one of the EU countries, for example), unless there is an indication to the contrary, compliance with the documentary verification requirements (risk retention, credit granting criteria and transparency obligations) may be inferred from the fact that the manufacturer(s) of the relevant securitisation are subject to direct obligations under the UK securitisation regime (or equivalent obligations in the EU or other jurisdictions). Clarifying application of the due diligence rules as they relate to documentary verification (as opposed to credit analysis) in the context of secondary trades would enable investors to invest more efficiently, particularly in times of market dislocation, which should improve liquidity in the secondary market.

2.3 Delegation of due diligence to another investor

(a) We note the proposed changes to the "institutional investor" definition (which are discussed in more detail in section 9.2 below). Among other things, these result in a narrower geographical scope of application of that definition as related to AIFMs, so that only UK authorised AIFMs will be in-scope. Once this change is in force, non-UK AIFMs that manage or market an AIF in the UK will no longer meet the "institutional investor" definition if such non-UK AIFMs are not authorised in the UK. This has potential practical implications for any existing due diligence delegation arrangements whereby a UK institutional investor (for example, a UK bank) delegated its due diligence to non-UK AIFMs that no longer meets the recast "institutional investor" definition.

(b) The first issue to consider in these circumstances is whether it is possible for a UK institutional investor (while remaining liable itself for any non-compliance) to delegate its due diligence to another investor, which does not meet the definition of "institutional investor". The existing requirements and the recast rules are open to interpretation on this point and more clarity confirming in the PRA Draft Rules, the FCA Draft Rules and in the SI that this is possible will be welcome. It will also address any uncertainty for existing arrangements where the delegation is made by a UK institutional investor to a non-UK AIFMs that will not meet the recast definition of "institutional investor".

2.4 ABCP due diligence

The Joint Associations note that SECN 4.2.1(e) of the FCA Draft Rules and Chapter 2, Article 5(1)(e) of the Securitisation Part of the PRA Draft Rules set out the information required to be verified as being made available "in the case of an ABCP programme or an ABCP transaction", namely "information on the underlying receivables or credit claims" at least on a monthly basis. By contrast, SECN 6.2.3 of the FCA Draft Rules and Chapter 2, Article 7(1)(a) of the Securitisation Part of the PRA Draft Rules modify the transparency requirements "In the case of ABCP" and "In the case of asset-backed commercial paper" respectively, providing that the relevant information need only be made available to holders of securitisation positions on an aggregate basis. The Joint Associations assume that the provision of data on an aggregate basis "in the case of ABCP" or "In the case of asset-backed commercial paper" as required by SECN 6.2.3 of the FCA Draft Rules and Chapter 2, Article 7(1)(a) of the Securitisation Part of the PRA Draft Rules respectively would meet the investor due diligence requirements to verify that "information on the underlying receivables or credit claims" is provided under SECN 4.2.1(e) of the FCA Draft Rules and Chapter 2, Article 5(1)(e) of the Securitisation Part of the PRA Draft Rules. However, it is not clear why a different formulation of words has been chosen in both places to address the same transparency requirement and we would suggest the wording is aligned with that in SECN 6.2.3 of the FCA Draft Rules and Chapter 2, Article 7(1)(a) of the Securitisation Part of the PRA Draft Rules. In general, we would welcome the opportunity to discuss the due diligence and transparency requirements for ABCP programmes and ABCP transactions as the application of these requirements to ABCP transactions and ABCP programmes would benefit from some clarification given current uncertainty amongst market participants.

In addition, the Joint Associations suggest that the following drafting amendment is are made to Chapter 2, Article 5(2) of the Securitisation Part of the PRA Draft Rules to reflect that Articles 5(1)(a) and (b) of that Chapter address originators and original lenders established, or not established, in the UK separately:

> "*As regards fully supported ABCP transactions, the requirement specified in point (a)* <u>or point (b), as applicable</u>, *of paragraph 1 of this Article shall apply to the sponsor and not to the institutional investor. In such cases, the sponsor shall verify that the originator or original lender which is not a credit institution or an investment firm as defined in points (1) and (2) of Article 4(1) of CRR 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 has effective systems in place to apply those criteria and processes in accordance with Article 9(1) of this Chapter (or equivalent FCA rules).*"

Finally, the Joint Associations note that corresponding wording has not been included in SECN 4 of the FCA Draft Rules. The Joint Associations consider that it is possible that a person could be a "sponsor" under Article 3(1)(b) of the SI but not be a PRA-authorised person. Accordingly, corresponding wording should be included in SECN 4 of the FCA Draft Rules to address fully supported ABCP transactions where the sponsor of the transaction is not a PRA-authorised person.

2.5 STS due diligence

The Joint Associations note that the rules set out in SECN 4.2.2R(1)(c) of the FCA Draft Rules and Chapter 2, Article 3(c) of the Securitisation Part of the PRA Draft Rules broadly require the investor in an STS securitisation to verify compliance of that securitisation with the STS requirements, maintaining the current requirements under Article 5(3)(c) of the UK Securitisation Regulation. These requirements apply to any institutional investor in an STS securitisation, regardless of whether that investor will derive any benefit (for example in terms of regulatory capital requirements) from the securitisation being considered STS. This presents a barrier to investment in STS securitisations for institutional investors that do not gain any benefits from STS securitisations, or who wish to invest but without recognising any such benefits.

The Joint Associations would suggest that SECN 4.2.2R(1)(c) of the FCA Draft Rules and Chapter 2, Article 3(c) of the Securitisation Part of the PRA Draft Rules are amended as part of this round of consultations to clarify that institutional investors are only required to diligence STS requirement compliance where they seek to derive a benefit from the securitisation being considered STS or intend to report it as such when reporting to their regulator. The Joint Associations believe it would be helpful to competitiveness of the UK investors to allow them freely to invest in STS securitisations and to treat them in the same manner as a non-STS securitisation so long as they do not recognise any benefits of holding a position in an STS securitisation compared to a non-STS securitisation for doing so.

2.6 Due diligence on credit granting standards for NPE securitisations

With reference to our comments in section 6.3 below on the adjusted application of credit granting standards for NPE securitisation and in order to remove divergence with the EU and to create a level-playing field for the UK institutional investors, the PRA Draft Rules, the FCA Draft Rules and the SI should be amended to include a derogation from otherwise applicable due diligence on credit granting standards, so that for NPEs the focus is shifted to the sound standards applicable "*in the selection and pricing of the exposures*".

2.7 Deemed due diligence compliance for positions in correlation trading portfolio

Correlation trading can constitute "securitisation", bringing this activity in-scope of certain regulatory requirements. We refer to our general comments in section 1.6 above seeking the disapplication of the requirements of the UK Securitisation Regulation to this type of transactions (without prejudice to their status as securitisations, or otherwise, for *prudential* purposes) and further note the following.

Correlation trading benefited from a special regime pre-2019, which resulted in disapplication of risk retention requirements and deemed compliance with investor due-diligence, provided certain conditions were met.

With the introduction of the EU Securitisation Regulation and the UK Securitisation Regulation, the risk retention exemption for correlation trading was carried forward in Article 6(6) of the EU Securitisation Regulation, Article 6(6) of the UK Securitisation Regulation and Article 13 of Commission Delegated Regulation (EU) 2023/2175 (the "**EU Recast Risk Retention RTS**") (which restate the provisions that apply under the pre-2019 risk retention RTS). This exemption is also preserved in Chapter 2, Article 6(6) and Chapter 3, Article 13 of the PRA Draft Rules and in SECN 5.2.21R and SECN 5.7.1R of the FCA Draft Rules. However, there has been a deficiency in the transposition of the treatment of these transactions compared to the pre-2019 position. There are no longer deemed compliance provisions for investor due-diligence and there is no exemption from burdensome transparency and reporting requirements, which were never designed for this type of transactions.

3. RISK RETENTION (RELEVANT TO BOTH THE PRA CP AND THE FCA CP)

As noted in section 1.2 above, where the PRA Draft Rules and the FCA Draft Rules cover the same provisions with no differences in policy approach, the drafting of the same rules should be identical. For the reasons discussed in section 1.2, any divergence without a policy reason is undesirable as even minor and non-material changes in drafting create unnecessary complexities, increase transaction and compliance costs and potentially undermine competitiveness of the UK sell-side and buy-side parties in the European securitisation markets. The PRA's approach of broadly maintaining drafting consistency with the existing requirements is to be preferred. The Joint Associations would also like to make the following general and specific comments.

3.1 General observations: importance of achieving compliance on a cross-border basis

(a) The Joint Associations welcome the UK risk retention reforms that remove divergence between EU and UK risk retention regimes as these facilitate compliance on a cross-border basis and increase the competitiveness of UK securitisation issuers and UK investors. However, while the proposed amendments helpfully remove some of the divergence, there are some areas where further changes to align the risk retention regime would be very welcome. We also observe that some new divergence is also introduced. The ability to achieve regulatory compliance on a cross-border basis removes unnecessary compliance costs and is extremely important to the securitisation markets and supports the stated regulatory objective of increasing competitiveness among other international securitisation markets. Therefore, we would strongly support further amendments in the PRA Draft Rules and the FCA Draft Rules that remove such unnecessary burden and costs. This should include, as further discussed in this section 3, the areas of divergence with the EU relating to the eligibility of servicer-retainer for NPE securitisations, the expansion of certain circumstances when the retention holder can be replaced.

(b) <u>Recognition of compliance with "equivalent" non-UK risk retention rules under the UK investor due diligence requirements:</u>

(i) As mentioned above, the Joint Associations' members believe that it is essential to the competitiveness of the UK securitisation market that compliance with the UK risk retention requirements can be achieved on a cross-border basis. In that regard, the Joint Associations draw the attention of the PRA and the FCA to the AFME response of 22 September 2023[19] to the invitation by the Financial Stability Board ("**FSB**") to provide feedback on the effect of the G20 reforms on securitisation.[20] In its response, AFME noted that none of the U.S., EU or UK regimes currently provide for mutual recognition, which results in cross-border securitisations having to comply with multiple risk retention regimes, which leads to costs and complexities without adding to financial stability. AFME, in its response, invited the FSB to support a recommendation, at the global level, that would address this fragmentation in future reforms.

(ii) Now that the UK has an opportunity to re-design its regulatory framework for securitisation in a smarter way, the time is ripe to explore this further. Therefore, the Joint Associations would like to invite the PRA and the FCA (together with HMT) to consider in due course the merits for introducing amendments to the UK investor due diligence requirements that recognise compliance on an ongoing basis by the relevant non-UK securitisation transaction parties with the

[19] See https://www.afme.eu/Portals/0/DispatchFeaturedImages/AFME%20Response%20to%20FSB%20(22092023).pdf.
[20] See https://www.fsb.org/2023/08/evaluation-on-effects-of-g20-reforms-on-securitisation-summary-terms-of-reference/.

domestic risk retention rules, applicable to them, that are considered "equivalent" (albeit not identical) to the UK retention rules. Such recognition would remove unnecessary burden, costs and challenges that arise from the need for cross-border compliance resulting from divergence between different risk retention regimes. Such recognition would also address, in particular, compliance challenges that arise in relation to certain UK risk retention provisions and exemptions that are limited by jurisdiction, which makes it impossible to rely on such provisions and exemptions in practice where cross-border compliance is needed. As an example, the jurisdictional limitation is relevant to consider for retention on a consolidated basis, for exemption from cash collateralisation in the case of synthetic or contingent retention by UK CRR and UK Solvency II firms and for exemption for securitisations of fully, unconditionally and irrevocably guaranteed exposures that meet certain conditions.

(iii) The UK has already paved the way, in this regard, post-Brexit by introducing temporary unilateral recognition in the UK of the EU securitisations designated as STS (provided that certain conditions are satisfied) and by putting in place under the FSMA 2023 provisions for the development of a permanent framework on the equivalence of third country STS securitisations. Similarly, the UK could take a lead in addressing recognition of well-developed risk retention regimes that exist in the U.S. and the EU, for example. The Joint Associations appreciate that exploring this topic further is potentially a longer-term project that could be addressed in the next phases of HMT, the PRA and the FCA consultations on securitisation reforms. Therefore, the Joint Associations would welcome an opportunity to discuss this with HMT, the PRA and the FCA further and to present case studies that could facilitate the formulation of future reforms in this area.

3.2 Replacement of the risk retainer entity

(a) The Joint Associations welcome the new flexibility introduced in the PRA Draft Rules and the FCA Draft Rules on the replacement of the risk retainer in the case of insolvency and in the case of retention on a consolidated basis.

The accommodation of the insolvency scenario is helpful from the perspective of cross-border compliance, as it mirrors forthcoming EU changes.

The retention on a consolidated basis is no longer an option in cross-border transactions because of post-Brexit divergence between the EU and the UK risk retention regimes. The UK provision requires, broadly, retention within a UK prudential consolidation group, while the EU requires, broadly, retention within an EU prudential consolidation group. As noted in section 3.1(b) above, this is the area of divergence that could be addressed by the UK recognition of compliance with non-UK risk retention regime. However, we nevertheless welcome the amendment that accommodates the risk retainer replacement in this context even if, for the time being, it may have little practical application.

(b) We also note that the PRA Draft Rules and the FCA Draft Rules did not adopt additional exemption "*for legal reasons*" beyond the control of the retainer or its shareholders that is included in the EU Recast Risk Retention RTS. From a cross-border compliance perspective, it will nevertheless be helpful to ensure that risk retainer replacement that is permitted under the EU risk retention regime is also recognised and accommodated for the purposes of the UK risk retention regime to avoid non-compliance from the perspective of the relevant UK sell-side party (in transactions involved mixed UK and non-UK originators, sponsors or original lenders), as well as from the perspective of relevant UK institutional investors. Presumably, the wide powers of modification and disapplication of the relevant requirements that are available to the FCA under the Designated Activities Regime and to the FCA and the PRA under section 138BA of the FSMA could be invoked to address this. However, the industry needs more guidance on this, including more clarity on the procedural steps involved, and timing, when such powers can be exercised by the PRA and/or the FCA in practice. Mirroring the EU wording would be greatly preferable.

(c) Finally, it should also be noted that, in practice, there may be other exceptional circumstances (unrelated to insolvency) when replacement of the risk retainer may be necessary, or even desirable, to ensure that risk retention is held by the party whose interests are appropriately aligned with those of the investors. For example, this may arise because of internal business restructuring or reorganisation of the risk retainer entity and/or its group which could not have been foreseen at the time of the securitisation, including following a group take-over or acquisition, which are becoming fairly common in the current economic climate. Given that the UK does not have the concept of a merger by way of universal succession which exists in the EU, the absence of an express exemption for transfers of risk retention in such circumstances creates significant practical difficulties and constraints on legitimate business reorganisations in the UK which do not exist in the EU. Another example where replacement of the risk retainer may be necessary is the scenario involving a Part VII transfer under the FSMA 2000. Therefore, the industry would welcome a further expansion of rules on change of retention holder in such situations, subject, of course, to proper alignment of interest and the replacement retention holder meeting the "sole purpose" test requirements.

(d) If provision is made for servicer-retainers as suggested above, an operative provision would, ideally, be included to facilitate transfer of the retention to a replacement servicer or servicers, ensuring that such provision accommodates servicer replacement triggers unrelated to insolvency (we note that no such provision is made at EU level, and that this is likely to reduce, though not eliminate, the practical utility of the servicer retainer option).

3.3 Sole purpose test

The Joint Associations support the proposed guidance in the PRA Draft Rules and the FCA Draft Rules on the "sole purpose" test. The Joint Associations would like to note however that while the drafting adopted by the PRA and the FCA is very similar, it is not identical. As noted, even where the differences are not material, as in this case, the industry would nevertheless welcome for the PRA and the FCA drafting to be fully lined up.

We also refer to the sole purpose test-related point made in section 1.3 above in connection with availability of grandfathering and/or transitional provisions for securitisations already in-scope of the UK Securitisation Regulation.

3.4 Measurement of the level of retention, the concept of "origination"

We refer to SECN 5.4.1R(1) of the FCA Draft Rules and Chapter 3, Article 10 of the Securitisation Part of the PRA Draft Rules.

We note that the FCA Draft Rules and the PRA Draft Rules do not adopt certain additional guidance included in the EU Recast Risk Retention RTS. We agree that the high-level principle proposed by the FCA and PRA in the rules referred to above – to the effect that origination is the time at which the exposures were first securitised - is the correct basis for this definition. However, as there may be some doubt, in practice, about the point in time at which exposures are first securitised, it may be helpful for the PRA and the FCA to consider providing additional – but explicitly non-exclusive - examples of events that can be recognised as fulfilling that high-level description, thereby simplifying transactional analysis.

In the context of a synthetic securitisation, for example, it would be helpful to clarify that the time of origination may be "*the date of the signature of the credit protection agreement*".[21]

Similarly, where the non-refundable purchase price discount includes the difference between the nominal amount of one or more tranches underwritten by the originator for subsequent sale and the price at which those tranches are first sold to unrelated third parties as referred to in Chapter 2, Article 6(3A), second subparagraph of the Securitisation Part of the PRA Draft Rules and SECN 5.2.12R(2)(c) of the FCA Draft Rules, it may not be clear that securitisation has not occurred prior to the unrelated third party sale (for example, if different entities in an originator's group retain different tranches in the initial underwriting) and it would be helpful to clarify that the time of origination may be the date of the agreement on a refundable purchase price discount.

Having taken the form of explicitly non-exclusive examples in the EBA's final draft report, we note that the fact patterns referred to in the EU Recast Risk Retention RTS are now articulated as representing the only possible times of origination (the list is exclusive). This is unfortunate, since other fact patterns can be envisaged representing points in time at which exposures are first securitised. The PRA and FCA should not follow the EU's approach, but should refer to any examples provided, as requested above, as explicitly non-exclusive examples of times fulfilling the general high level description.

3.5 Synthetic or contingent form of retention

The Joint Associations welcome amendments in Chapter 3, Article 3 of the Securitisation Part of the PRA Draft Rules and SECN 5.2.13R(2) of the FCA Draft Rules which exempt CRR firms as well as UK Solvency II firms from cash collateralisation requirement where the interest is retained in synthetic or contingent form.

However, this amendment results in a limited geographical scope of application given how the CRR firms and the UK Solvency II firms are defined for these purposes and, therefore, this exemption will have limited practical application. That is, as this exemption will be limited to the relevant UK-authorised firms only (while the equivalent exemption under the EU regime limits its application to the EU-authorised firms only), compliance challenges will arise on cross-border transactions that need to satisfy both the EU and UK risk retention regimes.

As discussed in section 3.1(b) above, any such concerns relating to the cross-border compliance challenges could be addressed via the introduction of an "equivalence" regime for certain non-UK risk retention frameworks.

3.6 Support for IACPM technical comments relating to synthetic securitisations

(a) We consider it to be uncontroversial that: the "nominal value" of a securitised exposure, for retention purposes, in the context of a synthetic securitisation, is the amount of protection referenced in the securitisation, i.e. the nominal value of exposure *securitised* (typically referred to as the reference obligation notional amount or RONA), rather than the absolute nominal value of the exposure (i.e. including both securitised and unsecuritised portions) where different; that that nominal value of exposure securitised

[21] Extract from the Commission text: "*the origination shall be the time at which the exposures were first securitised, which shall be one of the following: (i) the date of the issuance of securities;*
(ii) the date of the signature of the credit protection agreement;
(iii) the date of the agreement on a refundable purchase price discount;"

can exceed the outstanding balance of the exposure from time to time - for example where the protection references the credit limit of an undrawn, or partially drawn, commitment or RCF; and that, in the latter case, retention in the form of 5% of the nominal value of each of the securitised exposures (under option a), otherwise described as an originator's interest/seller's share (under option b) can be achieved by limiting protected losses to 95% of the outstanding balance from time to time. We understand, however, that clarifications to this effect would be welcome in some quarters.

(b) Where an originator chooses to comply with the risk retention requirements by holding a randomly selected portfolio of exposure (under option c) in the case of a revolving securitisation, we agree with IACPM's response to the effect that clarity would be welcome as to the circumstances in which the originator is required to replenish the randomly selected portfolio. The market's understanding is that such replenishment should only be required at the time the originator exercises its replenishment rights in respect of the securitised portfolio, and then only to the extent that the randomly selected portfolio has itself amortised to be less than 5% of the replenished securitised portfolio, but it would be helpful for this to be confirmed.

3.7 NPE securitisation

(a) The Joint Associations support that the PRA Draft Rules and the FCA Draft Rules provide for the non-refundable purchase price discount ("**NRPPD**") to be taken into account when calculating retained interest in NPE securitisations and it is helpful to see that the provisions broadly mirror the EU requirements, which will facilitate cross-border compliance.

(b) However, the Joint Associations note that the PRA Draft Rules and the FCA Draft Rules do not include proposals expressly to allow NPE asset servicers to act as eligible risk retainers – a helpful recent reform in the EU which the industry would welcome in the UK. The Joint Associations wonder if this may have been an oversight as even though the asset servicer-retainers do not appear to be permitted, in SECN 5.2.15R(4) of the FCA Draft Rules and Chapter 3, Article 6(4) of the Securitisation Part of the PRA Draft Rules [22] a provision in the guidance on random selection nevertheless refers to the retainer being the securitisation servicer.

Given the lack of the discussion on this point in the PRA CP or the FCA CP and the suggestion in the PRA Draft Rules and the FCA Draft Rules that asset servicer-retainers could, in some circumstances, be retainers, the industry would welcome further feedback from the PRA and the FCA on this point and, ideally, a clarification to the rules allowing NPE asset servicers to act as eligible risk retainers. This would further the stated statutory objective of increasing competitiveness of UK issuers in the securitisation market whilst supporting the fundamental principle of proper alignment of interests of investors with those of the retention holder for NPE securitisations. The Joint Associations would also note in this regard that, acknowledging the industry response[23] to HMT's call for evidence on the UK Securitisation Regulation of June 2021, the feedback statement included in the HMT Report of December 2021 noted that there

[22] SECN 5.2.16R(4) of the FCA Handbook reads: "*Where the retainer is the securitisation servicer, the selection conducted in accordance with SECN 5.2.16R must not lead to a deterioration in the servicing standards applied by the retainer on the transferred exposures relative to the retained exposures.*"
Chapter 3, Article 6(4) of the PRA Draft Rules reads: "*Where the retainer is the securitisation's servicer, the selection conducted in accordance with this Article shall not lead to a deterioration in the servicing standards applied by the retainer on the transferred exposures relative to the retained exposures.*"
[23] The Joint Association (AFME and UK Finance) response is available at: https://www.afme.eu/Portals/0/DispatchFeaturedImages/AFME-UK%20Finance%20Response%20to%20HMT%20Call%20for%20Evidence%20on%20UK%20Sec%20Reg.pdf

could be merit to the industry proposals to introduce servicer retainer option under the UK reforms.

3.8 ABCP Programmes

SECN 5.10.1R(3) of the FCA Draft Rules and Chapter 3, Article 16(3) of the PRA Draft Rules are missing certain clarifications on provisions for ABCP programmes, which are addressed in Recital (10) of the EU Recast Risk Retention RTS[24] and the related feedback analysis included in the EBA final report of April 2022.[25] The PRA Draft Rules and the FCA Draft Rules should be amended to include an express statement that where an ABCP programme meets the requirements of Article 8(4) of Chapter 2 of the PRA Draft Rules or SECN 7.3 of the FCA Draft Rules, there is no obligation to retain a material net economic interest at the level of both the underlying ABCP transaction and the ABCP programme.

3.9 Illustrative examples - different approach in drafting to the "overcollateralisation" concept in relation to first loss risk retention and the requirement to retain on an ongoing basis

Following from the above comment about the inconsistency in drafting in the PRA Draft Rules and the FCA Draft Rules, we query, by way of example, the rationale for the following differences.

In the guidance on the retention of the first loss tranche (see SECN 5.2.17R(1)(b) of the FCA Draft Rules and Chapter 3, Article 7 of the Securitisation Part of the PRA Draft Rules), there are provisions for overcollateralisation where it operates as a "first loss" position of not less than 5% of the nominal value of the securitised exposures. It is unhelpful that, in this context:

(a) the PRA Draft Rules use the concept of "*overcollateralisation*" as referred to in point (9) of Article 242 of CRR; but

(b) the FCA Draft Rules do not use reference to point (9) of Article 242 of CRR and instead use the term "*over collateralisation*" as defined in the Glossary of definitions of the FCA Handbook where, in turn, it is defined as follows: "*(in SECN) means any form of credit enhancement by virtue of which underlying exposures are posted in value which is higher than the value of the securitisation positions*". The latter repeats the defined term as referred to in point (9) of Article 242 of CRR.

The above example illustrates how unhelpful the difference between the PRA and the FCA drafting can be. While in this example the ultimate interpretation of the requirement results in the same position, the additional analysis needed to track through to that position is totally unnecessary and creates inefficiencies that should be avoided.

Similarly, the change in the wording used to express the required degree of permanence in relation to risk retention in the FCA Draft Rules, but not in the PRA Draft Rules (from a requirement for retention on an "ongoing basis" to a requirement to "continually retain", see

[24] Recital (10) states that: "*Article 8 of Regulation (EU) 2017/2402 provides for certain exceptions on the ban on resecuritisations. Because the retention requirements apply to the two levels of the transactions involved in a resecuritisation, it is necessary to specify how those transactions are to comply with the retention requirement. As a general rule, the first securitisations of exposures and the second 'repackaged' level of the transaction should be treated as separate for the purposes of meeting the risk retention requirement. There should therefore be an obligation to retain a material net economic interest at each of those levels. The same should apply for transactions with more than one underlying securitisation, such as ABCP programmes other than those referred to in Article 8(4) of Regulation (EU) 2017/2402. [...]*"

[25] See page 42 at: https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Draft%20Technical%20Standards/2022/EBA-RTS-2022-04%20RTS%20on%20risk%20retention%20requirements%20for%20securitisations%20/1030491/Final%20Draft%20RTS%20on%20Risk%20Retention%20in%20securitisation.pdf

4.2.1R(1)(c) and (d) of the FCA Draft Rules), necessitates industry-wide changes to undertakings and disclosures in standard form documentation for no discernible benefit.

3.10 Tidying up point for SECN 5.2.14R(1) (*FCA CP only*)

In SECN 5.2.14R(1) there is typo – see the mark-up below showing the amendment to that typo:

> "…(1) the retention of not less than 5% of the nominal value of each of the securitised exposures, provided that the retained credit risk ranks pari passu with or is subordinated to the credit risk ~~securities~~ securitised in relation to the same exposures;…"

3.11 Other comments on additional points not addressed in the PRA Draft Rules or the FCA Draft Rules

(a) Synthetic excess spread (SES): We note that the Consultation Materials do not replicate the proposed new ability of originators under the EU Recast Risk Retention RTS to count SES that is subject to a capital charge under the EU CRR towards satisfaction of the 5% retention requirement (see Article 10(1)(d) and Recitals to 4-3 of the EU Recast Risk Retention RTS). This is somewhat surprising given HMT's indication in the HMT Report of December 2021 that it could "*see potential benefits to L-shaped risk retention and including the excess spread as an element of risk retention*", while noting that "*further work with the regulators [would be] required to ensure that these changes, if implemented, would not negatively impact the alignment of sell side parties' incentives*". The proposed SES-based retention, under the EU Recast Risk Retention RTS, is currently limited to first loss retention. This may mean that uptake of the option in the EU is limited, in practice, given that in synthetic securitisations, the retention commonly takes the form of 5% of the nominal value of each asset (or in sufficiently granular pools a randomly selected 5% of assets) while retention via a first loss tranche is rarely economic, given the applicable capital requirements. However, permission to use this retention format under the UK rules is desirable: (i) in order to avoid cross border structuring issues for UK investors in EU securitisations that do make use of this retention format (SES being associated with real economy supportive asset classes such as consumer lending and SMEs) and (ii) because, if combined with permission for L-shaped retention (see below), it would be a genuinely useful retention option in transactions involving SES, while maintaining appropriate alignment of interests between the buy and sell side in the transaction: there is no reduction in the 5% 'skin in the game', merely more flexibility consistent with the regulatory purpose of the requirement. We note, in this context, that, although it has not implemented Article 248(1)(e) of the EU CRR (and related regulatory technical standards on the exposure value of SES, which remain under development), the UK does have a domestic capital requirement for SES in SS 9/13 (see Article 7 of SS 9/13) and that the EU's requirements, helpfully, refer to the recognisable exposure value of the synthetic excess spread as being calculated "*in accordance with the prudential regulation applicable to the originator*" rather than specifying compliance with the EU's (highly prescriptive) calculation mechanics.[26]

(b) L-shaped retention: As indicated above, SES-based risk retention would be a significantly more useful retention option, in practice, in transactions involving SES, if it could be combined with permission to use L-shaped retention. I.e. retention in which the overall 5% requirement could be reached using more than one retention format. For example, retention satisfied using the combination of a first loss tranche in the form of SES amounting to 1 % of the nominal value of the securitised exposures, together with retention of 4% of the nominal value of each asset (or in sufficiently granular pools a

[26] See Article 10(1)(d) of the EU Securitisation Regulation.

randomly selected 4% of the assets). Again, such permission would maintain appropriate alignment of interests between the buy and sell side in the transaction: there would be no reduction in the 5% 'skin in the game', merely more flexibility consistent with the regulatory purpose of the requirement. L-shaped retention is also (as indicated above) an option that appeared to find favour with HMT in its report. As well as offering structuring assistance to UK sell side parties in relation to the UK securitisation rules, permission to use L-shaped retention could facilitate cross-border structuring in transactions involving jurisdictions, such as the US, where L-shaped retention is possible. Permission to use L-shaped retention would either enhance the competitiveness of the UK (without vitiating standards) relative to the EU consistent with the FCA and PRAs' secondary competitiveness objective, or (perhaps even more usefully from the industry's perspective) provide an example for the EU to follow.

(c) We welcome the PRA and FCA's decision not to replicate the unnecessary (in light of the general prohibition on embedded mechanisms reducing the risk retention over time) and somewhat confusing EU requirements relating to fees payable to retainers.

4. TRANSPARENCY AND REPORTING *(RELEVANT TO BOTH THE PRA CP AND THE FCA CP)*

4.1 General

The Joint Associations appreciate the intention of the PRA and FCA not to make significant changes to the transparency and reporting requirements as part of the first round of consultations on amendments to the securitisation framework (as detailed in the Consultation Materials), and in particular, to the way in which the firms populate and submit reporting templates. As is rightly pointed out in the Consultation Materials, more substantive changes require adjustment of the reporting systems of the sell-side entities to ensure consistency and minimise interruptions to servicing and reporting cycles. The Joint Associations therefore support a fulsome consultation on further amendments to the transparency and reporting requirements in the next round of amendments to the securitisation framework, an integral part of which should be re-calibration of definitions of private and public securitisations (as to which see section 5 below). The Joint Associations hope however that the general observations on consistency of the substantive rules as between those made by the PRA and those made by the FCA in the absence of a difference in policy approach would be taken into account as part of the second round of consultations as well.

Additionally, although this is not a matter which is being consulted upon in the Consultation Materials, the Joint Associations would like to raise the question of recalibration of obligations on UK manufacturers to provide information and reporting on transactions where the investor base is off-shore (including in the EU) and either doesn't require information in a prescribed format, or requires information in a format different to that which is required by UK investors (for example, ESMA templates in the case of the EU investors). UK investors currently enjoy some flexibility to accept information in "substantially the same form" and the new rules would only require receipt by them of "sufficient" information. In contrast, UK manufacturers are currently in a position where they cannot opt out of the mandatory UK templated reporting even where their investors do not require it. This asymmetry doesn't seem to have a principles-based justification and results in unnecessary duplication of work and higher compliance costs for UK manufacturers.

4.2 Specific comment: Application to PRA-authorised persons

The Joint Associations note that the drafting of SECN 6.1.1 of the FCA Draft Rules does not include the same carve-out for PRA-authorised persons as is set out in SECN 4.1.1 and 5.1.1. The Joint Associations presume that it is not the intention for SECN 6 to apply to PRA-authorised persons given that Regulation 5(2)(c) of the SI prohibits the FCA from making rules applicable to PRA-authorised persons in this area. The Joint Associations would be grateful if this could be therefore corrected by including the same carve-out as is set out in SECN 4.1.1 and 5.1.1 of the FCA Draft Rules.

4.3 Specific comments: frequency of transaction reporting

The Joint Associations believe that it would be helpful to clarify the following, more granular, point. In terms of the frequency of provision of information (including investor and loan-level report), the existing regime has a somewhat unfortunate technical quirk in that it effectively does not recognise longer first interest periods by requiring that the relevant reports are provided on at least quarterly basis. It is however not uncommon for first interest periods to run longer than 3 months (specifically, but not exclusively, for products like CLOs which commonly continue to ramp up beyond 3 months from closing), which, on a strict and literal application of the rule, requires the investor reports detailing distributions to investors to be produced before the distribution are actually made for the first time in accordance with the transaction documents. There is some pre-2021 guidance in the ESMA Q&As on the EU Securitisation Regulation, that continues to be relevant, which assists with the interpretation that the trigger for the first reporting is the first interest payment date (IPD), meaning that shorter or longer first IPD is the relevant reference point for the reporting to commence. The Joint Associations would therefore welcome an express clarification on this point in the PRA Draft Rules and the FCA Draft Rules as part of the current round of consultations.

4.4 Specific comments: protection of confidentiality and processing of personal data

While the Joint Associations appreciate that it is not the intention of the PRA or the FCA to make any substantive changes to the transparency and reporting provisions, it believes that it would nonetheless be helpful to clarify the following point.

The FCA Draft Rules in SECN 6.2.5R-6.2.7R include provisions relating to the protection of confidentiality and processing of personal data, in relation to which there is a permission to disclose summary of (rather than full) transaction documents and to anonymise and aggregate data reporting where it would otherwise conflict with a duty of confidentiality or processing of personal data. These are important provisions which directly correlate to the ability to anonymise certain data reporting under the applicable reporting templates (which templates do not change for the time being).

A matching exemption should be included in the PRA Draft Rules as well.

It would be helpful to clarify that this exemption also applies to contractual obligations to maintain confidentiality (if applicable).

4.5 Specific comment: Title of SECN 6

The title of SECN 6 "Requirements on transparency relating to *securitisation position*" should be amended so that the reference to "securitisation position" is deleted, as it is misleading and does not correctly reflect the nature of the applicable requirements. We note in this regard that the corresponding provisions in the PRA Draft Rules refer to "Transparency requirements for originators, sponsors and SSPE".

4.6 Specific comments: modifications in the case of ABCP

The Joint Associations note that SECN 6.2.3R of the FCA Draft Rules and Chapter 2, Article 7(1) of the Securitisation Part of the PRA Draft Rules provide for modifications to the usual transparency requirements "in the case of ABCP" and "in the case of asset-backed commercial paper" respectively, providing that certain information shall be made available to holder of securitisation positions in aggregate form, and that "loan-level data" shall be made available to the sponsor and, upon request, the relevant competent authority. The Joint Associations assume that this "loan-level data" is the same loan-level data required to be made available pursuant to SECN 6.2.1R(1) of the FCA Draft Rules and Chapter 2, Article 7(1)(a) of the Securitisation Part of the PRA Draft Rules, and so suggests that SECN 6.2.3R of the FCA Draft Rules and Chapter 2, Article 7(1) of the Securitisation Part of the PRA Draft Rules are amended to cross-refer to SECN 6.2.1R(1) of the FCA Draft Rules and Chapter 2, Article 7(1)(a) of the Securitisation Part of the PRA Draft Rules respectively, rather than referencing "loan-level data".

With respect to SECN 6 of the FCA Draft Rules and Chapter 2, Article 7 of the Securitisation Part of the PRA Draft Rules as it applies to ABCP programmes, it would be helpful to clarify that the transparency and reporting obligations (including the provision of transaction documents) apply at, and relate to, the ABCP programme level itself, and not at the level of any underlying ABCP transaction which the ABCP programme may be investing in.

5. DEFINITION OF PUBLIC SECURITISATION

The Joint Associations welcome an opportunity to engage on the review of the definitions of a public and private securitisation and thank the FCA for providing background to its current thinking on the matter.

As the FCA points out in the FCA CP, in the context of securitisation rules, the definitions of a public and private securitisation are intrinsically linked to the broader securitisation reporting and disclosure regime, including the use of prescribed standardised templates and securitisation repositories. It is indeed very difficult to have a meaningful conversation about these definitions in the absence of a clear idea on what the UK's future revised reporting and disclosure framework would look like. Clarity on this framework is even more important if the effect of the review is significantly to broaden the population of deals which are subject to the public transaction regime without an appropriately designed opt-out (or "comply or explain") option. On that basis, the members' views expressed in this letter are subject to review of the more detailed proposals which we understand will be revealed in the second phase of consultation.[27] With that in mind, the Joint Associations would like to make a few observations which they believe are essential to the adequate calibration of the regime.

The Joint Associations and their members accept that the FCA would like to review the relevant rules and appreciate the context provided by the FCA (specifically, around the use of regulated markets in the EU on transactions which involve a UK manufacturer). However, for the reasons communicated as part of the previous consultations on the matter,[28] the Joint Associations would strongly discourage a mechanistic approach to re-defining public securitisations and, specifically, any approach which is centred solely or predominantly on listing.[29] There are indeed a number of other factors which should be taken into account:

- **Investor ability to negotiate reporting package**: As flagged in the previous rounds of feedback on the matter, there exists a significant number of deals which may have external features of a "public" securitisation – such as listing – but on which investors have a substantial degree of control over due diligence, the reporting package and post-closing access to the originator/sponsor. There is also a large population of private transactions (such as bilateral facilities, intra-group arrangements, narrowly distributed transactions or transactions with specific restrictions on transfers) which are currently caught by the templated reporting regime. This fact does not seem to have received sufficient recognition in the existing regulatory framework which is somewhat surprising given that one of the main drivers for creating a standardised disclosure regime has been to support the investors' right to receive sufficient – and relevant – information in circumstances where there may exist information asymmetry or imbalances in negotiating power. The Joint Associations believe it would indeed be helpful to re-focus on this in the context of any attempt to re-calibrate the definitions of private and public securitisations, and indeed, in the review of the public transactions reporting regime. Doing otherwise lead to undesirable outcomes for the industry as a whole and may disproportionately affect certain product types.

[27] In that context, particular attention should be paid to confidentiality (whether by operation of law or contract) of information and proper calibration of use of the securitisation repositories.

[28] https://www.afme.eu/Portals/0/DispatchFeaturedImages/AFME-UK%20Finance%20Response%20to%20HMT%20Call%20for%20Evidence%20on%20UK%20Sec%20Reg.pdf (the "**2021 Response to HMT Call for Evidence**").

[29] It is worth noting that the history of discussions on this topic is itself perhaps best proof of just how difficult it is to come up with a sufficiently precise rule for allocating transactions to "public" and "private" buckets. The sheer breadth of variables and commercial drivers which exist across different product types, including the need for a "quoted Eurobond" exemption from UK withholding tax ("**WHT**"), number of investors, investor preferences, type of syndication, marketing and publicity and existing market practices just to name a few, do, in fact, point to the conclusion that coming up with an alternative to the current definition of a public securitisation is not at all easy or straightforward.

- **Self-certification/opt-out regime**: Given the broad spectrum of transactions captured by the securitisation reporting requirements, and the significant variability of factors which determine whether a particular transaction is a genuinely public securitisation (and therefore, requires support in the form of standardised reporting templates and securitisation repositories reporting), the Joint Associations believe that it would be helpful to consider introducing a form of self-certification "comply or explain" regime. Such a regime could allow to opt out of the public disclosure regime for transactions which may be more difficult to categorise as clearly public or private, or indeed those transactions which have the hallmarks of a public securitisation but on which investors are comfortable with the reporting package provided by the sell-side.[30] The Joint Associations would be happy to engage in further discussions on what such a regime could look like in the second phase of consultation.

- **Listing as the sole/main test**: The Joint Associations would agree that, as a general matter, listing on a regulated market of a UK stock exchange (and availability of a section 85 prospectus under the FSMA 2000) would typically be indicative of a public transaction – as per the current definition.[31] The Joint Associations would further see the logic of why the FCA is considering expanding this test for deals with a UK manufacturer to similar listings in the EU. However, this should be predicated on the fact that, at present, the UK and EU regimes are largely identical. Any future regulatory divergence could well alter this conclusion. It is also not clear from the FCA CP whether expanding the geographical reach beyond the EU for transactions with a UK manufacturer is being considered in this context. The Joint Associations would strongly caution against such an approach to avoid any unintended consequences, including in the context of investment in third country transactions.

  The same logic on jurisdictional footprint applies to listing on unregulated markets. The position for these is much less straightforward. A significant number of transactions which are listed on GEM in Ireland, other MTFs elsewhere in the EU, or in the UK, are often essentially private deals designed for, and with active participation from start to finish from, specific investors who would typically be heavily involved in the negotiations of deal terms, including ongoing reporting and post-closing access to the originator/sponsor. The choice of listing on an unregulated market/MTF in the UK or the EU for those deals would typically be driven by the requirement to obtain a quoted Eurobond exemption for WHT purposes, investor expectations, market practice for a particular product, publicity, or any combination of these, as opposed to a desire to achieve broader syndication or create a liquid market for the relevant securities. Therefore, any approach to determining whether a transaction should be subject to reporting regime designed for public securitisations solely on the basis of listing on an unregulated market would be too blunt a tool. Other factors to consider in that context have been communicated in previous rounds of discussions and include the presence of a public announcement,[32] appointment of an arranger, number of investors, book-building / syndication process and investor ability to negotiate the terms of the deal reporting package (or express acceptance by an investor that the package satisfies its

[30] A good example of such transactions are European CLOs. Under the current regime, these deals provide **three** sets of deal reports: (i) one set are reports (including monthly loan-level data tapes) which investors actually use and which have been developed over time based on investor demands and preferences (although this is not expressly mandated by the regulation, these reports are pretty standardised and consistent across all deals); (ii) one set are ESMA reporting templates; and (iii) one final set are FCA reporting templates (as most CLO managers are UK entities). Neither of the latter two sets of reports is believed by the investors to be necessary, or of value superior to the market standard deal reports.

[31] Although as flagged previously, that even such transactions could effectively be private in the sense that they would not be marketed in the usual way and would be placed with a very limited number of investors who are typically heavily involved in the negotiation of deal terms.

[32] This would exclude however non-deal specific marketing / advertising communications, for example.

requirements)[33].[34] In any event, the Joint Associations would caution against an overly mechanistic approach to the matter, and would strongly caution against expanding the list of potential listing venues outside of the EU (assuming that the EU and the UK regimes remain substantially the same).

- **Textual Determination of Public/Private**: Notwithstanding the potential evolution of the allocation rules and the desirability of a self-certification regime, the Joint Associations consider that the structure of the rules should remain that all securitisation transactions are private transactions unless they meet the required factor(s) to be considered public securitisation transactions. This mirrors the current approach and aids certainty in the market.

- **Third country deals**: As mentioned above, the Joint Associations would like to emphasise that it is important to give careful consideration to the jurisdictional / cross-border reach in any discussions on the reporting framework, including the specific question of definition of private/public securitisations.

- **Time of Determination**: The Joint Associations believe that the determination of whether a transaction is a public or private securitisation should be made by the originator, original lender or sponsor at the time of creation of the securitisation and should not change its status for the originator, original lender or sponsor during the on-going life of the securitisation unless it is amended by such parties in a manner which would then make it meet the requirements of being a public securitisation. If, subsequently, an entity is considering acquiring a securitisation position in a private securitisation and considers that it requires the same templated information as if the transaction had been allocated as a public securitisation, then this should be part of its due diligence requirements and it should not acquire the securitisation position unless it is able to receive such templated information.

In light of the considerations discussed above, the Joint Associations would like to stress, again, that due to the complexity of the matter, proper consideration should be given to all relevant factors, including the proposed configuration of the revised disclosure and reporting framework, in order to re-calibrate the definition of public securitisations in a manner which does not disrupt the balance between protection of investors on the one hand and unnecessary additional compliance costs, or indeed, other adverse consequences for the market on the other.

[33] For example, through the so called investor representation letters which are not infrequent in the context of private transactions.

[34] See for example the response to question 23 in the 2021 Response to HMT Call for Evidence.

6. CREDIT GRANTING STANDARDS ***<u>(RELEVANT TO BOTH THE PRA CP AND THE FCA CP)</u>***

6.1 Removal of references to "sponsor"

SECN 8.2.1R and SECN 8.2.3R of the FCA Draft Rules and Chapter 2, Article 9(1) of the Securitisation Part of the PRA Draft Rules recast currently applicable Article 9 of the UK Securitisation Regulation and continue to refer in the context of the criteria for credit granting standards not only to "originators" and "original lenders", but also to "sponsors". The reference to "sponsor" should be deleted as it is out of step with the concept of the "sponsor" as defined for the purpose of the UK Securitisation Regulation (which is not a credit-granting entity) and it is also at odds with the investor due diligence requirements on credit granting standards that must be verified prior to investing, because such due diligence requirements do not (quite rightly) refer to sponsors and only refer in this context to original lenders and originators.

Please note that this issue was raised by the industry in the response[35] to the HMT's call for evidence on the UK Securitisation Regulation of June 2021 and in response[36] to the European Commission's targeted consultation on the functioning of the EU framework of July 2021. The European Commission's subsequent feedback included in its report of 10 October 2022[37] acknowledged in this regard that "*obligation under Article 9 of the Securitisation Regulation can only be meaningfully met by the credit-granting entity*". While in the EU this discrepancy and deletion of references to "sponsor" in Article 9 can only be addressed via amendments to the level 1 text (which will require further EU reforms and is likely to take some time), in the UK, now is a perfect opportunity to fix this issues via amendments in the PRA Draft Rules and the FCA Draft Rules.

6.2 Specific comments: Application to PRA-authorised person

The Joint Associations note that the drafting of SECN 8.1.1 of the FCA Draft Rules does not include the same carve-out for PRA-authorised persons as is set out in SECN 4.1.1 and 5.1.1. The Joint Associations presume that it is not the intention for SECN 8 to apply to PRA-authorised persons given that Regulation 5(2)(e) of the SI prohibits the FCA from making rules applicable to PRA-authorised persons in this area. The Joint Associations would be grateful if this could be therefore corrected by including the same carve-out for PRA-authorised persons as is set out in SECN 4.1.1 and 5.1.1 of the FCA Draft Rules.

6.3 Adjusted application of credit granting standards in the case of NPEs

The PRA CP and the FCA CP confirm that there is support for adjusting the requirements to facilitate NPE securitisations. It is helpful to see that the risk retention requirements for NPE securitisations in the PRA Draft Rules and the FCA Draft Rules recognise the NRPPD. Unfortunately, important amendments to the credit granting regime for NPE securitisations, recently implemented in the EU, and consequential amendments to the investor due diligence requirements around sell-side compliance with these requirements do not appear to be replicated in the UK consultation proposals. There is no discussion in relation to this divergence in the UK consultation proposals, and we hope that it may be an oversight. The rationale for NPE specific amendments to the credit granting requirements is that the decision to invest in an NPE securitisation is – in broad terms - based on recovery assumptions, rather than credit assessment (i.e., the risk that the workout will not generate funds to cover the discounted

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[35] The Joint Association (AFME and UK Finance) response is available at: https://www.afme.eu/Portals/0/DispatchFeaturedImages/AFME-UK%20Finance%20Response%20to%20HMT%20Call%20for%20Evidence%20on%20UK%20Sec%20Reg.pdf

[36] AFME response is available at: https://www.afme.eu/Portals/0/DispatchFeaturedImages/COM%20AFME%20Response%20to%20Article%2046%20Consultation%2030%20Sept%202021%20Submission.pdf

[37] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0517

purchase price, rather than the risk of default of the (defaulted/otherwise non-performing) obligor).

It will be helpful for the PRA and the FCA to consider extending the special case of NPE securitisations further and, like in the EU, to consider also introducing adjusted application of the credit granting standards both in the recast of Article 9 as well as in the recast of the investor due diligence requirements on credit granting standards (with regard to the latter, see also our comment in the investor due diligence section in section 2 above).

In particular, in SECN 8.2.1R of the FCA Draft Rules and Chapter 2, Article 9(1) of the Securitisation Part of the PRA Draft Rules, the industry would welcome the additional provision which states that, by way of derogation from sound and well-defined criteria for credit-granting with reference to the relevant provisions in the PRA Draft Rules and the FCA Draft Rules, with regard to underlying exposures that were NPEs at the time the originator purchased them from the relevant third party, sound standards shall apply "*in the selection and pricing of the exposures*". This will create a level-playing field with the EU regime and will support the international competitiveness and growth objective of the FSMA 2023, as it will result in a more proportionate and practical application of the credit granting standards in the context of loans that are non-performing in nature.

7. RE-SECURITISATIONS *(RELEVANT TO BOTH THE PRA CP AND THE FCA CP)*

The Joint Associations welcome and appreciates the clarifications relating to permitted re-securitisations, as well as to the treatment of fully supported ABCP programmes. However, the Joint Associations believe it would be helpful to include further clarifications on legitimate purposes of re-securitisations.

The Joint Associations note that the "legitimate purposes" were previously set out in Article 8(3) of the UK Securitisation Regulation. The Joint Associations consider that it would be helpful to set out certain legitimate purposes (in a similar manner to what was the case in Article 8(3) of the UK Securitisation Regulation) to provide further guidance to market participants as to the circumstances in which the FCA or the PRA may grant a permission or direction permitting the underlying exposures to include securitisation positions. While the Joint Associations acknowledge that the FCA Draft Rules and the PRA Draft Rules give the FCA and the PRA the flexibility to allow any current exemptions regarding the restriction on re-securitisation to continue, members feel that more clarity around the principles and criteria which will be taken into account when determining whether a permission or direction will be granted would certainly be helpful in setting the perimeter of expectations.

8. STS REGIME *(RELEVANT TO THE FCA CP ONLY)*

8.1 Status of EU Level 3 measures, such as the EBA STS guidelines

(a) We refer to the general comments made in section 1.1 above and note that, in connection with the STS framework, the FCA CP in paragraph 3.5 states that the FCA does not address any Level 3 material and that the FCA does not integrate this material into the FCA rules at this stage. While the Joint Associations note that FCA has introduced new guidance in the FCA Draft Rules, in some places, replicating Level 3 principles, the industry is left with gaps and interpretational uncertainty, because the relevant aspects of the STS guidelines developed by the EBA are not incorporated into the FCA Draft Rules and the status of such guidelines under the FCA Draft Rules is not addressed. Please note that the STS guidelines form part of the STS checklists currently prepared by the relevant transaction parties when designating a securitisation as STS and analysing compliance with the applicable STS criteria.

(b) Furthermore, the ESMA Q&As on the EU Securitisation Regulation are another example of Level 3 measures which are heavily relied on in practice in relation to the transparency and reporting requirements (including for securitisations designated as STS). The ESMA Q&As largely continue to be relevant given that the UK reporting templates are not yet changing.

(c) To address this gap and the interpretational uncertainty, the Joint Associations request that the FCA acknowledges in its feedback statement the existence and continuing applicability of these Level 3 measures, unless the new regulatory framework created by the SI and the FCA Draft Rules (and, to the extent applicable, the PRA Draft Rules) expressly alters the position as it exists under the relevant guidance today.

8.2 "Knowledge Base" materials (such as technical notes and procedural notes) to replace EU Level 3 measures to accompany SECN 2

(a) As identified in earlier comments, compliance with the UK STS requirements will require the provision of ongoing guidance on the interpretational issues, as well as procedural issues (such as the STS notification process or engaging various third parties involved in the verification of the applicable STS criteria requirements). Therefore, by analogy with the UK Prospectus Regulation Rules and the Disclosure and Transparency Rules of the FCA Handbook, the industry would welcome the development of a "Knowledge Base" comprising of Q&As and other guidance which can be dynamically updated by the FCA in response to the issues raised by the industry and in response to the developments in the UK securitisation market.

(b) In this regard, we note that it would be particularly helpful to develop UK master trust-specific guidance addressing issues like the consistent approach to the creation of a single "securitisation transaction unique identifier" set at the programme-level and the requirements for the asset pool audit that recognise that master trust securitisations involve highly granular and highly fluctuating pool of assets.

(c) Procedural guidance could address STS notification issues, including rectification, amendments and updates to the STS notifications recorded on the UK STS Notification Register that consider investors' needs. For example, the STS Notification Register should make it as clear as possible (ideally via a single record for the same transaction) where amendments or updates are made to the original STS notification. For UK STS securitisations that are currently considered "private" securitisations, the non-ABCP originator and sponsor should have the option/flexibility to waive anonymity so that the full record and the full STS notification is made available about such transaction on the

UK STS Notification Register (we discuss this further in section 8.7 below). Procedural guidance could then further address the requires steps and issues.

8.3 Assessment of borrower's creditworthiness (SECN 2.2.11R(4)) and No exposures in default or exposures to credit-impaired obligors (SECN 2.3.10R)

(a) It is helpful to see that the recast of the UK STS criteria on the assessment of borrower's creditworthiness in SECN 2.2.11R(4) coordinates the relevant concepts with certain existing provisions of the Mortgages and Home Finance: Conduct of Business sourcebook (**MCOB**) and the Consumer Credit sourcebook (**CONC**) in the FCA Handbook.

(b) With reference to section 8.2(a) above, it may be helpful to extend coordination between the UK STS criteria and existing MCOB provisions further. In this regard the Joint Associations note that SECN 2.3.10R(2)(d) states there must be no exposures to credit-impaired obligors who, among other things, "*had a court grant its creditors a final non-appealable right of enforcement or material damages as a result of a missed payment within 3 years before the date of origination*".

This STS criterion can give rise to interpretational uncertainty in practice in the context of the impact and relevance to the applicable analysis of the county court judgments (the "**CCJs**"). In this regard the Joint Associations note MCOB already contains a defined concept of the "*credit-impaired customer*",[38] which is helpful for the purposes of the CCJ analysis as it sets a materiality threshold. That is, the relevant definition states in this regard that the in-scope customer "*has been the subject of one or more county court judgments, with a total value greater than £500, within the last three years*". Conceptually, similar CCJs-related guidance would be appropriate for interpretation of this STS criterion and the Joint Associations would welcome further amendments by way of such additional guidance being incorporated into SECN2.

8.4 Homogeneity

It is helpful, in relation to the homogeneity requirements for corporate exposures (i.e. the asset type specified in FCA SECN 2.4.1R(a)(iv)), that the FCA, like the EU EBA, proposes to maintain the existing distinction between micro and SME exposures, on the one hand, and other corporate exposures, on the other, without attempting to impose a one-size-fits-all regulatory definition of the terms SME and/or large corporate. We assume that the assignment of corporate exposures between the two categories is intended to be based on their internal classification by the originator (i.e. aligned with the underwriting process), but it would, be helpful if the FCA could explicitly confirm this, as the EBA has done in the EU in its comments in its final report on the homogeneity definition for STS purposes[39] (see, for example, p3-4, 6, 13, 17-18, 21-22). This would, for example, avoid any unworkable implication that the definitions should be aligned

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[38] https://www.handbook.fca.org.uk/handbook/glossary/G2950.html
credit-impaired customer
a customer who:
(a) within the last two years has owed overdue payments, in an amount equivalent to three months' payments, on a mortgage or other loan (whether secured or unsecured), except where the amount overdue reached that level because of late payment caused by errors by a bank or other third party; or
(b) has been the subject of one or more county court judgments, with a total value greater than £500, within the last three years; or
(c) has been subject to an individual voluntary arrangement or bankruptcy order which was in force at any time within the last three years.
This "credit-impaired customer" concept is referred to in MCOB 11.6.16R, MCOB 4.7A.22,

[39] https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Draft%20Technical%20Standards/2023/EBA-RTS-2023-01%20RTS%20on%20homogeneity/1051902/Final%20draft%20Regulatory%20Technical%20Standards%20on%20the%20homogeneity%20of%20the%20underlying%20exposures%20in%20STS%20securitisation.pdf

with regulatory concepts such as the future "large corporates" definition in the post Basel 3.1 implementation UK CRR (Article 142(1)(5a) CRR3) or (pending the proposed removal of this treatment in the UK under its Basel 3.1 implementation) the UK CRR definition of SME for purposes for the SME supporting factor (Art 501(2)(b) UK CRR and Commission Recommendation 2003/361/EC).

We would welcome clarification from the FCA (in line with EBA's clarification, for the EU, in comments in its final report on the homogeneity definition for STS purposes) that project finance exposures are capable of classification as corporate exposures, or, where relevant, "*other underlying exposures, which, in the opinion of the originator or sponsor, constitute a distinct asset type, based on internal methodologies and parameters*".

8.5 STS for ABCP programmes

The existing STS framework for ABCP programmes has no practical application as there are no programmes where all underlying ABCP transactions are designated as STS, as currently required under Article 26(1) of the UK Securitisation Regulation and as will continue to be required under the recast provision set out in SECN 2.3.30R. Therefore, the UK Securitisation Regulation reforms present a unique opportunity to revisit this framework and to make it work better for ABCP programme-level STS designation. For example, certain flexibility, such as a minimum threshold by size or number of STS-designated ABCP transactions required could be introduced. The industry would welcome further dialogue on this.

8.6 Synthetic STS framework – support for IACPM comments

We support the IACPM response and its invitation to reconsider the position in the UK on the introduction of STS framework for synthetic (on-balance-sheet) securitisations. The absence of an STS framework for synthetic securitisations puts UK banks at a significant competitive disadvantage to their EU counterparts, in a way which is not consistent with the PRA's and FCA's objective of having regard to the competitiveness of UK financial markets and would welcome further dialogue on this with HMT, the PRA and the FCA.

8.7 STS Notification – ability to waive anonymity on "private" STS securitisations

As noted in section 8.2 above, on UK STS securitisations that are currently (or in the future as a result of further reforms) considered "private" securitisations, the non-ABCP originator and sponsor should have the option/flexibility to waive the anonymity so that the full record and the full STS notification is made available about such transaction on the UK STS Notification Register (the **Register**).

In practice, when investing in STS securitisations, institutional investors rely on the records of the Register for the purposes of their due diligence in addition to all other disclosures made available to them in relation to the STS securitisation designation. However, the STS notification regime for "private" securitisations results in only the anonymised record of the STS notification being made available on the Register, which makes it impossible to identify the transaction.

There will be "private" securitisations now and in the future that would prefer for only an anonymised record being created on the Register, so the ability to anonymise the STS records should be preserved. However, many "private" securitisations would welcome some flexibility and the choice to waive the anonymity (in particular at this stage, when majority of UK STS-designated securitisations are technically "private" until the definition of "public" securitisation is recalibrated at the later stage of the UK reforms).

9. DEFINITIONS (*RELEVANT TO BOTH THE PRA CP AND THE FCA CP*)

The Joint Associations would like to make a couple of general comments on changes to definitions of securitisation and institutional investor.

9.1 "Securitisation" definition

(a) Interpretation of the specialised lending characteristics: Limb (c) of the restated definition of "securitisation",[40] relating to the exclusion, from the definition, of transactions featuring certain characteristics associated with specialised lending, removes the cross-reference to Article 147(8) of the UK CRR (relating to specialised lending) and, instead, embeds these characteristics in the restated definition of "securitisation" itself based on the current version of Article 147(8).

While the removal of the UK CRR cross-reference and consolidation of the relevant criteria within the definition of "securitisation" may be perceived as helpful (for example, specialised lending as a concept in the UK and EU CRR is currently relevant only to underlying exposures that are subject to the IRB approach (rather than the standardised approach) and that are corporate exposures (as opposed to e.g. retail exposures)), the Joint Associations would welcome some caution with the de-coupling from the UK CRR as that potentially gives rise to interpretational uncertainty with regard to:

(i) background materials (including Basel materials) on the interpretation of the specialised lending characteristics and to what extent these remain relevant, including, as noted already in section 1.1 above, certain historical guidance;[41]

(ii) the relevance of Basel 3.1 implementation in the UK[42] to the extent it results in amendments to the existing parameters of the IRB specialised lending characteristics in the UK CRR framework, including any new guidance (and, indeed, the implementation of the wholly new, and different,[43] SL framework for exposures subject to the standardised approach envisaged in Basel 3.1).

Therefore, further guidance and the dialogue with the market participants on these matters would be welcome.

As indicated above, Recital 6 to the retained level 1 legislation, on exposures creating direct payment obligations for transaction or schemes used to finance or operate physical assets (in connection with the securitisation definition and securitisation perimeter) is regularly referred to in transactional analysis and opinions and should be preserved though guidance confirming the continued interpretational value of recitals.

(b) Avoiding multiple sources that duplicate the same definition: The FCA Draft Rules very helpfully do not themselves duplicate the definition of "securitisation" and instead define

[40] As set out in the PRA Draft Rules and, by reference to the SI, in the FCA Draft Rules.

[41] For ease of reference, we note again that one such example include the "Guidelines on the implementation, validation and assessment of Advanced Measurement (AMA) and Internal Ratings Based (IRB) Approaches (GL10)", which include useful materials on the classification of specialised lending exposures, published by the Committee of European Banking Supervisors in 2006, which is still a useful reference point in analysing the specialised lending exemption in the definition of "securitisation" under the EU Securitisation Regulation as well as the UK Securitisation Regulation.

[42] https://www.bankofengland.co.uk/prudential-regulation/publication/2022/november/implementation-of-the-basel-3-1-standards

[43] E.g. excluding real estate entirely.

it by a cross-reference to the SI.[44] The PRA Draft Rules do not follow this approach and instead duplicate the same definition as in the SI.

The Joint Associations' members feel that such duplication should be avoided as it will result in increased transactional costs (e.g. drafting disclosure and transaction documents, advice etc) and costs of compliance (e.g. review and maintenance of securitisation investment procedures and checklists): a single main source of key defined terms is preferrable over multiple definitions of the same term in different sources. Defining the same definition in multiple places also creates an additional risk of divergence in case of future changes affecting the relevant definition. This is also an example of a potential area of divergence which is a broader topic that we also raise in this response.

9.2 "Institutional investor" definition

(a) With regard to the definition of "institutional investor" as defined in Regulation 3(1) of the SI, Chapter 1 (*Application and Definitions*) of the PRA Draft Rules and Annex A (*Adjustments to the Glossary of definitions*) of the FCA Draft Rules, we have the following comments in relation to AIFMs (which are not small registered UK AIFMs).

(i) We welcome the clear intention to remove extraterritorial problem with supervision and enforcement that the existing definition causes for non-UK AIFMs. However, the recast wording should be improved. Please consider making the amendments as per the mark-up below. The second limb in sub-paragraph (ii) that refers to "*markets or manages an AIF [...] in the United Kingdom*" is not necessary, because the first limb in sub-paragraph (i) is sufficient to achieve the required goal and to limit the application of this definition to UK-registered AIFMs only where they manage and/or market any UK or non-UK AIF in the UK:

> "*an AIFM (as defined in regulation 4(1) 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) in respect of an AIF (as defined in regulation 3 of the 2013 Regulations) which it manages in the United Kingdom;~~ 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;~~*"

(ii) Alternatively, the definition could be even clearer that it is the *AIF* itself that should be the relevant "institutional investor" by characterisation of its agent, rather than the agent (AIFM) itself (who may be doing MIFID top up investment management services for persons who are not otherwise "institutional

[44] The FCA Draft Rules provide that "*securitisation [...] (in SECN) has the meaning in regulation 3(1) of the Securitisation Regulations*".

investors"). For example, the alternative approach would be to recast to this definition as follows:

> "*an AIF (as defined in regulation 3 of the 2013 Regulations) which is being managed in the United Kingdom by an AIFM (as defined in regulation 4(1) of the Alternative Investment Fund Managers Regulations 2013) 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)*"

Under this alternative approach, the recast definition would capture any AIF (where ever set up) whose AIFM is a UK FCA licensed AIFM (i.e. which is not a small AIFM). It would **not** capture therefore where there is an AIF with a non-UK AIFM who delegated portfolio management back to a delegate UK AIFM (as the non-UK would be the AIFM for that AIF – you can only have one AIFM). Where a UK AIFM is acting as a delegate portfolio manager then it would be caught under a different limb of the institutional investor definition as the "FCA investment firm".

(b) We also draw your attention to the comment in section 2.3 above relating to the delegation of investor due diligence to another investor, which is impacted by the changes in the "institutional investor" definition.

9.3 "Non-ABCP securitisation" definition in the FCA Draft Rules

Unlike in (a) the current version of the UK Securitisation Regulation, (b) the draft SI and (c) the PRA Draft Rules, the FCA Draft Rules introduce a definition of "non-ABCP securitisation", defined as "*a securitisation whose investors are not solely ABCP programmes*". This is problematic for transactions which are funded by both ABCP and by investors on their balance sheet. We would consider these to be both ABCP and non-ABCP transactions, for example, for the purposes of the Article 7 reporting requirements and for the STS requirements. If the definition in the FCA Draft Rules remains as currently drafted, this would indicate that for a securitisation which has both ABCP and non-ABCP investors it would be a non-ABCP securitisation. That would imply that the non-ABCP requirements would need to be met with respect to ABCP investors, meaning that the reporting templates set out in Annexes XI and XIII could not be used and that the non-ABCP templates would have to be used. It would also imply that the relevant STS requirements would be the non-ABCP STS requirements even with respect to ABCP investors. These seem like unintentional consequences and we would suggest going back to the previous drafting in the relevant provisions or amending this definition to refer to a securitisation which is not an ABCP transaction or an ABCP programme.

ANNEX A
FCA CP-SPECIFIC QUESTIONS AND CORRESPONDING JOINT ASSOCIATIONS' COMMENTS

Q1 Do you have any comments about how we have incorporated provisions of the UK SR into our rules, apart from the provisions which have been the subject of policy change as described in this paper?

Yes. See our comments in section 1 above.

Q2 Do you agree with our proposed clarification of what information an institutional investor should receive to conduct its due diligence?

See our comments in section 2 above.

Q3 Do you agree with our proposed clarification of the delegation of the due diligence responsibility?

See our comments in sections 1.3 and 2.3 above.

Q4 If you do not agree with our proposals on the due diligence requirements, how could we change them?

See our comments in section 2 above.

Q5 Do you agree with our proposed approach to risk retention for non-performing exposures (NPE)?

See our comments in section 3.7 above.

Q6 Do you agree with our proposals around the insolvency of the retainer?

See our comments in section 3.2 above.

Q7 Do you agree with our proposals for the sole purpose test?

See our comments in section 3.3 above.

Q8 Do you agree with our proposals for risk retention in resecuritisations?

See our comments in section 3.8 above.

Q9 Do you agree with our proposals to exempt more firms from cash collateralisation of the retention piece?

See our comments in section 3.5 above.

Q10 Do you agree with our proposals for comparability of assets on the balance sheet and 'cherry picking' in risk retention?

No specific comments.

Q11 Is there anything else associated with our proposals on risk retention that you would like to raise?

Yes. Please see our other comments in section 3 above.

Q12 Do you agree with our proposals for the scope of our rules in geographically mixed scenarios?

Yes. It is helpful to have greater clarity on the geographical scope of application.

Q13 Do you agree with our proposed amendments to currency references?

Yes. We agree with the proposed replacement of references to Euros with references to Sterling, excluding for now where currencies appear in templates, as these will be amended at a later stage when the templates are considered in the subsequent consultation. We agree that, for simplicity, it makes sense to change the currency but to keep the notional amounts unchanged, given the effects of inflation since January 2019.

Q14 Do you agree with our proposed definition of 'established in the United Kingdom'?

Yes. Also, as noted in section 9 above, it is generally helpful to have a single source of the key defined terms. Therefore, the Joint Associations agree with the proposed definition which cross refers to Regulation 3(1) of the SI, which in turns limits the scope to entities constituted under the law of a part of the UK with a head office (or, if it has a registered office, that office is) in the UK.

Q15 Do you agree with our proposals to clarify aspects of simple, transparent and standardised (STS) notifications and homogeneity?

Yes. See further our comments in section 8.4 above.

Q16 Do you agree with our proposals for resecuritisations and credit-granting?

With regard to re-securitisation, please see our comments in section 7 above.

With regard to credit-granting, please see our comments in section 6 above.

Q17 Are there any matters relating to transitional provisions that you would like to raise?

Please see our comments in section 1.3 above.

Q18 Are there any other matters relating to our rules that you would like to raise?

Prudential matters: We note that the Consultation Materials relate to non-prudential aspects of securitisation regulation. However, we feel it is important to note that the industry, in the UK, remains without a solution in relation to the pressing issue of the impact of the Basel 3.1 output floor on the economics of securitisations (in particular significant risk transfer securitisations).

In the EU, a transitional halving (until 2032) of the 'p factors' governing non-neutrality in the SEC-SA for purposes of calculating the output floor has resolved this issue, pending a more fulsome review of the securitisation prudential requirements. The EBA is mandated to undertake such a review, which will hopefully result in an increase in the risk sensitivity of the framework overall and its ability to scale and serve as a significant tool to assist banks with prudential balance sheet management: facilitating lending to the real economy and to assist the green transition, notwithstanding tightening financial conditions and concerns around the availability of AT1 instruments.

We note that banks are unable to structure deals, today, that may be adversely impacted by the output floor during its phase in from 2025-2030, so that clarity on this topic is a matter of urgency.

The industry further hopes that the PRA, like the EU and – at international level the FSB which has a review ongoing in relation to securitisation prudential and risk retention requirements – will (in furtherance of its new secondary international competitiveness and growth objective) engage in relation to the broader risk sensitivity/calibration of the securitisation prudential requirements. In addition to the issues identified above, the industry would welcome dialogue with the PRA on a number of other, UK-specificities in securitisation prudential regulation that hinder UK competitiveness. These would include the absence of an STS framework for synthetic securitisations (referenced in section 8.6 above). They would also include (among other points of detail) the PRA's apparent reluctance (in practice) to recognise the (Basel endorsed) unfunded credit risk mitigation format in the context of SRT securitisations (at least, to the extent required to achieve the requisite risk transfer) in the private sector (in the public sector, HMT through the British Business Bank itself provides such protection).

Q19 Do you agree that the definition of a public and a private securitisation should be reviewed?

See section 5 above.

Q20 Do you agree with the approach of focusing on the definition of a public securitisation? If not, which approach would you suggest?

See section 5 above.

Q21 Do you agree that considering the number of investors would be problematic?

See section 5 above. The Joint Associations would caution against a mechanistic approach to the definition of a public securitisation.

Q22 For the definition of a public securitisation, do you agree with the concept of considering admission to trading on venues outside of the UK? What, if any, might be the unintended consequences? What principles should be used in identifying the appropriate non-UK venues for these purposes?

The Joint Associations would caution against jurisdictional expansion and instead encourage a holistic approach to the review of the definition of a public securitisation which takes into account all the relevant factors and provides flexibility for self-certification and opt-outs from the public regime. The Joint Associations fully support a proper review and re-calibration of the public reporting framework. See section 5 above for more detail.

Q23 Would it be desirable to connect a public announcement or general communication to the definition of a public securitisation?

The Joint Associations would caution against mechanistic approach to the definition of a public securitisation (especially one linked solely or predominantly to listing). There are a number of factors, including number of investors, plan of distribution, reasonable expectations of the investing public, tight transferability restrictions, intra-group or purely bilateral nature of transactions, existence of other risk-reducing factors all of which should be properly considered and taken into account. See section 5 above for more detail.

Q24 Do you think the templates for public securitisations could be more proportionate?

The Joint Associations agree that templates for public securitisations could be more proportionate. Additionally, as noted in the 2021 Response to HMT Call for Evidence (see page 26), any tolerance thresholds for the use of "no data" options should be carefully reviewed and calibrated by reference to an appropriate data set. See also section 5 above.

Q25 What is the best way to balance standardisation and comparability of disclosure on the one hand against flexibility and adaptability of securitisation as a financing technique?

See section 5 above.

Q26 Do you think there are asset classes where reporting of individual underlying exposures is not useful and, if so, what in your view would constitute proportionate disclosure in those instances?

The Joint Associations believe that, for granular asset classes (such as credit cards, trade receivables and consumer loans), reporting of individual underlying exposures is not useful, and reporting of aggregated data should be allowed instead.

Q27 Are there any other factors to consider in defining and reporting different types of securitisations?

See section 5 above.

ANNEX B
NON-EXHAUSTIVE EXAMPLES OF "LOST" RECITALS

- Recital 6 to the retained level 1 legislation, on exposures creating direct payment obligations for transaction or schemes used to finance or operate physical assets (in connection with the securitisation definition and securitisation perimeter),[45]
- Recital 9 to the retained level 1 legislation, on proportionality in due diligence requirements,[46]
- Recital 13 to the retained level 1 legislation on the nature of private securitisations,[47] and
- Recital 1 to the pre-2019 EU CRR risk retention RTS regarding automatic satisfaction of retention in the context of securitisations of own liabilities.[48]

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[45] "*An exposure that creates a direct payment obligation for a transaction or scheme used to finance or operate physical assets should not be considered an exposure to a securitisation, even if the transaction or scheme has payment obligations of different seniority*".

[46] "*[I]t is essential that institutional investors be subject to proportionate due-diligence requirements ensuring that they properly assess the risks arising from all types of securitisations, to the benefit of end investors.*"

[47] "*Private securitisations are often bespoke. They are important because they allow parties to enter into securitisation transactions without disclosing sensitive commercial information on the transaction (e.g. disclosing that a certain company needs funding to expand production or that an investment firm is entering a new market as part of its strategy) and/or related to the underlying assets (e.g. on the type of trade receivable generated by an industrial firm) to the market and competitors. 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. Therefore, it is appropriate to exempt private securitisations from the requirement to notify the transaction information to a securitisation repository.*"

[48] "*Where an entity exclusively securitises assets consisting of its own liabilities, alignment of interests is established automatically for that securitisation. Where it is clear that the credit risk remains with the originator, the retention of interest by the originator is unnecessary and would not improve on the pre-existing position*".

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