HM Treasury

Review of the Securitisation Regulation:

Call for evidence

June 2021

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Chapter 1

Introduction and context

1.1 Securitisation is the process of pooling various financial assets to form a financial instrument that can be marketed to investors. This packaging allows lenders (such as banks) to transfer the risks of loans or assets (such as mortgages, auto loans or consumer loans) to other banks or long-term investors (such as insurance companies or asset managers). The securities are 'tranched', which means that they carry different levels of risks and reward to suit the appetite of different investors. A securitisation will typically involve three parties – a sponsor, an originator (who is often the lender of the underlying exposures) and a Securitisation Special Purpose Entity (SSPE) – who collectively can be referred to as the manufacturers of a securitisation.

1.2 The other key entities involved in a typical securitisation are investors. They invest in the asset-backed securities issued by an SSPE and, in turn, receive interest and capital payments based on the cashflows generated by the underlying exposures of the securitisation. Investors might include insurance or reinsurance undertakings, pension schemes, Alternative Investment Fund Managers (AIFMs), Undertakings for the Collective Investment in Transferable Securities (UCITS) funds, credit institutions (i.e. banks and building societies) or investment firms.

1.3 Securitisation is an important part of well-functioning markets and a useful source of finance for UK businesses. It can aid capital, liquidity and risk management. Soundly structured securitisation is a useful channel for diversifying funding sources and allows for a broader distribution of financial-sector risk. Securitisation can also help free up originators' balance sheets to allow for further lending to the economy. Overall, it can make the financial system more efficient and provide additional investment opportunities.

1.4 Securitisation is considered to have played a significant role in the Global Financial Crisis (GFC), [1] due to insufficient transparency of the risk involved and the misalignment between investors' and manufacturers' interests. This created an impetus for reforms that would introduce stricter standards and make securitisations simpler and more transparent. The Securitisation Regulation, which is the topic of this call for evidence, was a key element of these reforms in the UK.

1.5 Well-structured and robust securitisation can support economic recoveries. This is particularly pertinent today in the context of the UK's recovery from the effects of the Covid-19 pandemic. It will be vitally important that lenders continue to provide significant support to the real economy, and securitisation can help them do this.

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[1] See, for example, [The 2008 crisis: transpacific or transatlantic? (bis.org)](bis.org)

Securitisation Regulations

1.6 Securitisation legislation in the UK aims to make the securitisation market function more effectively. When introduced, this included:

a. The Securitisation Regulation (EU) 2017/2402 (the EU Sec Reg), which laid down a general framework for securitisation and created a specific framework for designating certain securitisations as simple, transparent and standardised securitisations (STS); and

b. The CRR amending Regulation (EU) 2017/2401, which amended the Capital Requirements Regulation (CRR), including methods to calculate risk weights and preferential treatment for STS securitisations meeting certain criteria.

1.7 These two regulations are referred to as the 'Securitisation Regulations'. The Securitisation Regulations came into effect in the UK and EU on 1 January 2019.[2] The UK played a full and active role in their design as an EU member state, and HM Treasury continues to support their intended outcomes.

1.8 The Securitisation Regulations aimed to strengthen the legislative framework for securitisations and to revive securitisation markets. The EU Sec Reg consolidated and amended the securitisation rules previously covered by various pieces of legislation.

1.9 Following the end of the EU Exit transition period, the Securitisation (Amendment) (EU Exit) Regulations 2019 (the 'Securitisation Exit SI') addressed deficiencies that arose from the withdrawal of the UK from the EU.[3] These changes were made to ensure that the securitisation framework, as set out in the Securitisation Regulations, continued to operate effectively after the UK left the EU. This legislative approach, which was taken across government, is known in financial services as 'onshoring'. The onshored EU Sec Reg is henceforth referred to as the 'Sec Reg'. This call for evidence focuses on the Sec Reg rather than the CRR amending regulation, as the review requirement described below relates to the Sec Reg.

Requirements for all securitisations

1.10 The Sec Reg sets out requirements that all securitisation transactions – and the entities involved in such transactions – must comply with. It includes requirements on investor due diligence, risk retention, transparency obligations, credit-granting criteria, a ban on re-securitisation and additional, specific requirements for entities involved in a securitisation transaction.

Framework for STS securitisations

1.11 In addition to general rules that all securitisation transactions must follow, the Sec Reg created a framework in line with international standards set by the Basel Committee on Banking Supervision (BCBS) and the International Organisation of Securities Commissions (IOSCO) for Simple, Transparent and Comparable (STC) securitisations. The standards contain criteria which securitisations can meet in order

2 The EU Sec Reg was implemented in the UK through The Securitisations Regulations 2018 Implementing SI 2018/1288.

3 This instrument also amended Regulations (EC) No 1060/2009, (EU) 648/2012, (EU) 575/2013 (the CRR) and Delegated Regulation (EU) 2015/61, as well as making necessary changes to relevant UK law.

to be classified as STC, as well as rules on the capital treatment of STC securitisations.

1.12 The STC criteria were adopted by the BCBS and IOSCO in 2015 for traditional (non-ABCP) securitisations[4] and in 2018 for short-term, asset-backed commercial paper (ABCP) securitisations.[5]

1.13 The Sec Reg framework, in line with the BCBS-IOSCO STC criteria, refers to Simple, Transparent and Standardised (STS) securitisations. The Sec Reg framework for STS securitisations is designed to make it easier for investors to understand and assess the risks of a securitisation investment. Subject to meeting specified criteria, manufacturers are able to designate their securitisations as STS. Manufacturers are liable for their STS designation, but in turn investors must check that all STS securitisations they invest in comply with these requirements. The STS requirements are covered in Articles 18 to 27 of the Sec Reg.[6]

1.14 The CRR amending regulation implemented the revised BCBS-IOSCO capital treatment of STC securitisations by allowing preferential capital treatment for exposures to STS securitisations by CRR firms, such as credit institutions and investment firms.

Review requirement

1.15 Article 46 of the Sec Reg places a legal obligation on HM Treasury to review the functioning of the Sec Reg and lay a report in Parliament by 1 January 2022. There are a number of areas in this review obligation that must be assessed by HM Treasury. Each of these areas is covered in this call for evidence. For the full text of Article 46, please see Annex A.

1.16 The report to be laid in Parliament by HM Treasury is required to assess:

a. Effects of the Sec Reg – including the introduction of the STS framework – on the functioning of the securitisation market, the contribution of securitisation to the real economy (in particular on access to credit for Small and Medium-sized Enterprises (SMEs) and investments), and the interconnectedness between financial institutions and the stability of the financial sector;

b. Risk retention modalities;

c. Disclosures related to private securitisations;

d. An STS equivalence regime;

e. Environmental, Social, and Governance (ESG) disclosures;

f. The third-party verification regime; and

g. Limited licensed banks.

1.17 The review provides HM Treasury with a timely opportunity to consider how the Sec Reg can best deliver for the UK financial market and economy. As set out in the Chancellor's speech on his vision for financial services in November 2020, the UK's position outside of the EU presents a unique opportunity to ensure its

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4 BCBS-IOSCO criteria for non-ABCP securitisations from 2015.

5 BCBS-IOSCO criteria for ABCP securitisations from 2018.

6 Criteria for STS non-ABCP transactions are in Articles 20, 21 and 22 and for STS ABCP transactions in Articles 24, 25 and 26 of the Sec Reg.

regulatory approach for financial services is tailored to UK markets, whilst remaining committed to the highest international standards of regulation.[7] To this end, although this call for evidence largely covers the legally mandated review areas, it seeks views on other ways by which the Sec Reg might be improved to ensure the regime is as effective as it can be.

1.18 HM Treasury sees this review as underpinned by two of its objectives:

a. Ensuring the stability of the macro-economic environment and financial system, enabling strong, sustainable and balanced growth;

b. Increasing employment and productivity, and ensuring strong growth and competitiveness across all regions of the UK through a comprehensive package of structural reforms.[8]

1.19 Stemming from these objectives, HM Treasury's overarching aims for the review of the Sec Reg are:

a. To bolster securitisation standards in the UK, in order to enhance investor protection and promote market transparency; and

b. To support and develop securitisation markets in the UK, including through the increased issuance of STS securitisations, in order to ultimately increase their contribution to the real economy.

1.20 This review is separate to other initiatives related to securitisation, including a recent HMRC and HM Treasury consultation on the reform of taxation of securitisation companies,[9] and an ongoing Prudential Regulation Authority (PRA) consultation on the securitisation of Non-Performing Loans (NPLs).[10]

Considerations

1.21 A number of factors are pertinent to the outcome of the review.

Review period and Covid-19

1.22 A key aim of the review is to understand the effects of the Sec Reg on the UK securitisation market. Since the Sec Reg has applied since 1 January 2019, with a significant number of technical standards coming into force in the last year, the data available for consideration in this review covers a limited period of time. This makes it challenging to understand what the longer-term effects of the Sec Reg might be.

1.23 A significant additional difficulty is related to the impact of the Covid-19 pandemic. As explained in more detail in Chapter 2, the issuance of securitisations globally has been affected by the pandemic. It might prove difficult to differentiate the effects of the implementation of the Sec Reg from the effects of the pandemic on the securitisation market. However, it also presents an important opportunity to understand how securitisation can help in crisis recovery.

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7 See Chancellor sets out ambition for future of UK financial services.

8 See objectives in HM Treasury – About us.

9 Reform of the taxation of securitisation companies consultation.

10 CP10/21 - Implementation of Basel standards: Non-performing loan securitisations | Bank of England

Future Regulatory Framework

1.24 This call for evidence is a targeted review of the regulatory approach taken under the Sec Reg. Separately, HM Treasury is conducting a wider review – the Future Regulatory Framework (FRF) Review – to determine how the overall framework for financial services will need to adapt to the UK's position outside of the EU.

1.25 The key purpose of the FRF Review is to determine how the UK's financial services regulatory framework needs to adapt to reflect our position outside the EU and ensure it is fit for the future. It considers whether changes are required to regulators' objectives and principles; how we ensure regulators' accountability and scrutiny arrangements with the Treasury, Parliament and stakeholders are appropriate given the regulators' new responsibilities; and how responsibility for designing and implementing rules in areas of retained EU law is transferred to the regulators. The government published a consultation on the FRF in October 2020.[11] It will publish a second consultation on the FRF Review later in 2021.

1.26 However, as the FRF Review is still ongoing, HM Treasury considers it important that respondents to this call for evidence set out by when any proposed changes are needed, in order to consider whether they are best delivered through changes to existing legislation or through regulator rules following the implementation of the FRF. To that effect, HM Treasury would like to understand which proposals for changes are most time-sensitive, such as any changes that might be beneficial to the economic recovery from Covid-19. Responses to this consultation will therefore be considered in parallel with the FRF Review.

Responses and next steps

1.27 This call for evidence aims to gather insight to help HM Treasury inform the review and the report laid in Parliament on the specific areas outlined in paragraph 1.16. HM Treasury is also using the opportunity of this call for evidence to seek more detailed views on two potential changes which, if considered desirable, might be brought forward at the appropriate legislative opportunity:

a. Whether a change is required to scope out certain non-UK Alternative Investment Fund Managers (AIFMs) marketing in the UK from certain requirements in the Sec Reg, as described in Chapter 9; and

b. Whether it would be desirable to introduce an STS equivalence regime, as described in Chapter 5.

1.28 Responses to this call for evidence will also inform longer-term thinking and strategy for the UK securitisation regime by HM Treasury alongside the financial services regulators – the Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA).

1.29 The report laid in Parliament is not legislation and therefore it will not give effect to any proposed changes to the UK securitisation regime arising from this call for evidence. Proposed changes might require legislation at the appropriate opportunity. If any proposed changes are taken forward by the financial services regulators, they will consider what further, more technical, consultations would be

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11 Future Regulatory Framework Review: Consultation

appropriate, as is consistent with their own consultation practices. HM Treasury will set out how the reforms will be taken forward in the report it lays in Parliament.

1.30 Responses should be submitted to SecuritisationReview@hmtreasury.gov.uk by 2 September 2021. Please also send any comments or enquiries to SecuritisationReview@hmtreasury.gov.uk. To support robust evidence-based policy making, respondents are asked to include high quality supporting evidence in their responses. More information on how HM Treasury will use your personal data for the purposes of this call for evidence is available on the Securitisation Regulation Review webpage.

Chapter 2

Overall effects of the Securitisation Regulation

2.1 The Sec Reg was introduced to help revive high-quality securitisation markets after the GFC, without repeating the mistakes made before it. These mutually reinforcing ambitions are supported by the Sec Reg's various provisions, including on disclosure, risk retention and credit granting criteria. The new STS framework also aligns with ambitions for a clearer and more robust regulatory framework.

Review requirement

2.2 Article 46(2)(c) of the Sec Reg requires HM Treasury to assess the effects of the regulation on three areas:

a. the functioning of the securitisation market;

b. the contribution of securitisation to the real economy, in particular on access to credit for SMEs; and

c. the interconnectedness between financial institutions and financial stability.

2.3 Aside from regulation, there are traditionally a number of other, wider factors that affect the performance of securitisation markets. This includes the availability of deposits and cheaper and simpler alternative funding channels for UK banks and building societies. Different market mechanisms and set-ups, such as the involvement of government-supported agencies in other jurisdictions, can also impact market activity.

2.4 Furthermore, the recent impacts of Covid-19, EU Exit and the incomplete implementation of the Sec Reg (i.e. the publication of EU technical standards after the Sec Reg came into effect) make it more challenging to assign causality and effectively evaluate the effects of the Sec Reg in isolation.

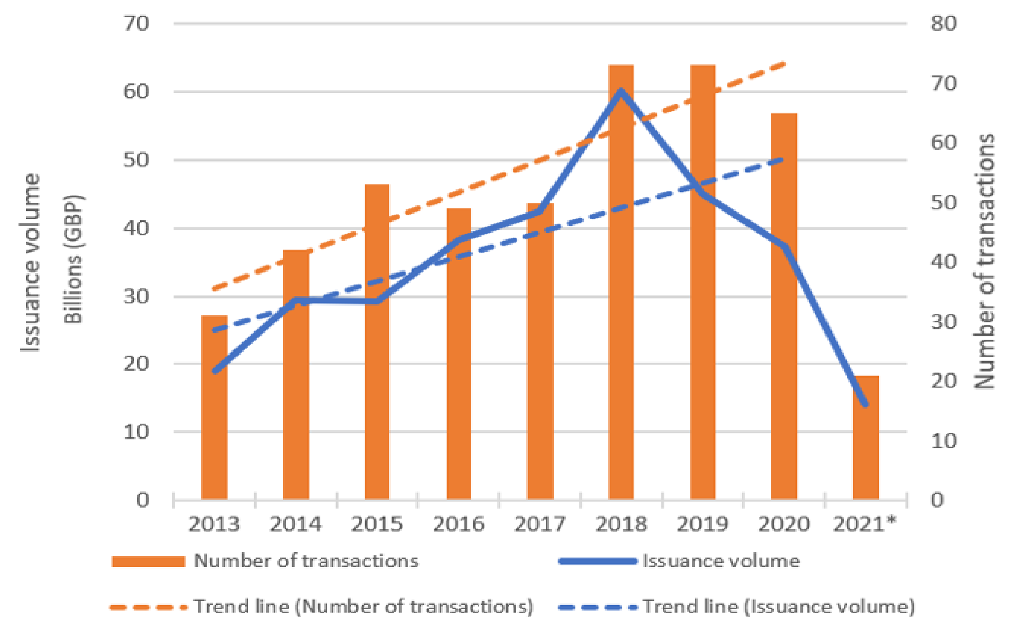
2.5 For example, it is feasible that the Covid-19 pandemic itself, as well as the associated support measures undertaken by governments and central banks, impacted the securitisation market in the UK and across the globe. Recovery measures might have made financing mechanisms other than securitisation more attractive to securitisation manufacturers.

2.6 HM Treasury seeks respondents' views on the impact of the Sec Reg and other factors, namely Covid-19 and EU Exit, on the UK securitisation market. These views will enable HM Treasury to better understand and evaluate the effectiveness, functioning and resilience of the Sec Reg in its wider context, since it came into effect on 1 January 2019.

Market functioning

2.7 Available data indicates a fairly positive picture for the UK securitisation market.[1] Since the GFC, the securitisation market has rebounded: the number of securitisations issued has increased significantly since 2014, while new issuance volume has risen more gradually in the same period (see Chart A). These trends have more or less continued since 2019, when the UK's securitisation market has had to adapt to the Sec Reg's new provisions, though there has been some decrease during the Covid-19 pandemic.

Chart 2.A: Number and volume of GBP-denominated securitisations

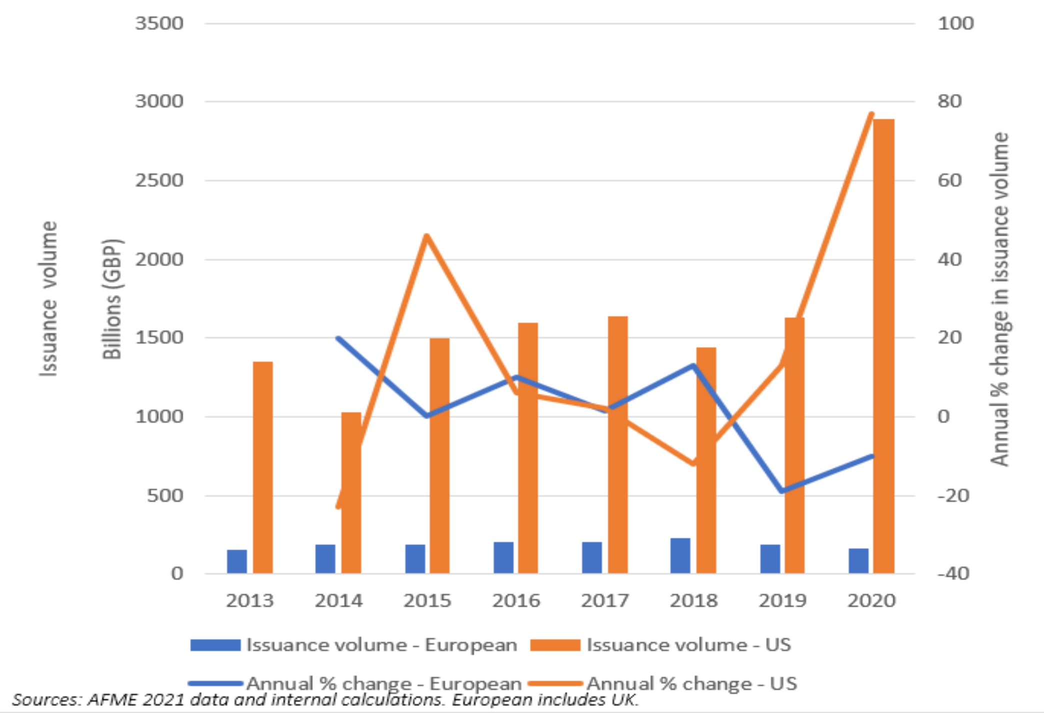


Sources: Dealogic, Bloomberg and internal calculations
**Includes data up to 31/03/2021*

2.8 In comparison, the overall European securitisation market has remained flat in the last decade, while the US securitisation market has grown steadily over the same period. Since the start of the Covid-19 pandemic, the European market overall saw a contraction of issuances, whereas the US securitisation market grew strongly (see Chart B).

[1] For the purposes of this CfE, the GBP-denominated securitisation market is synonymous with the UK securitisation market.

Chart 2.B: Issuance volume of US and European securitisations

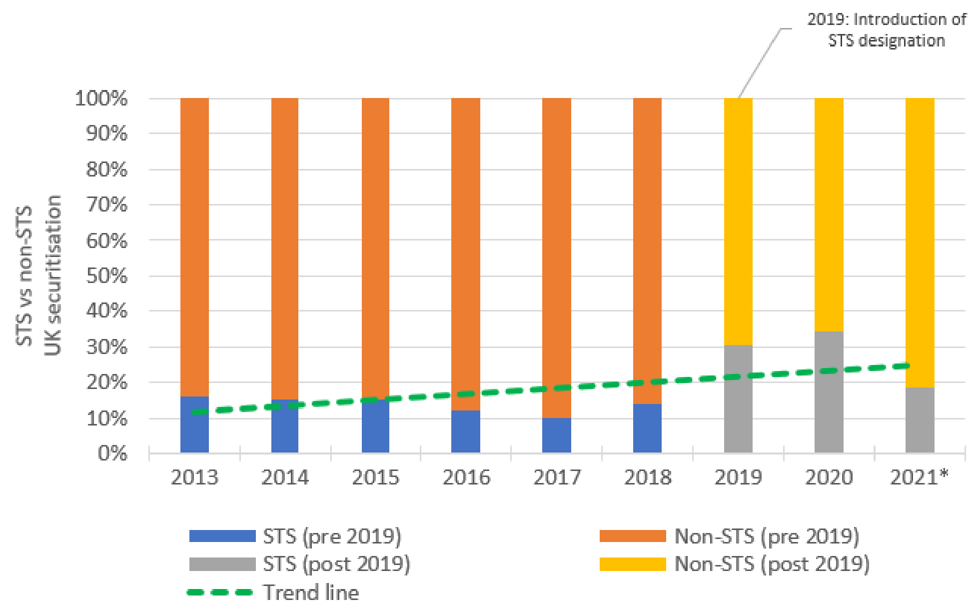


Sources: AFME 2021 data and internal calculations. European includes UK.

2.9 In terms of STS securitisations, there has been an increase in their proportion of total UK issuance since the Sec Reg was introduced (see Chart C). The latest data[2] for securitisations in Europe, including the UK, suggest that 39% of all securitisation issuance in 2020 was STS securitisations, which is a six-percentage point increase from 2019.

2 AFME Securitisation Data Report Q4 2020

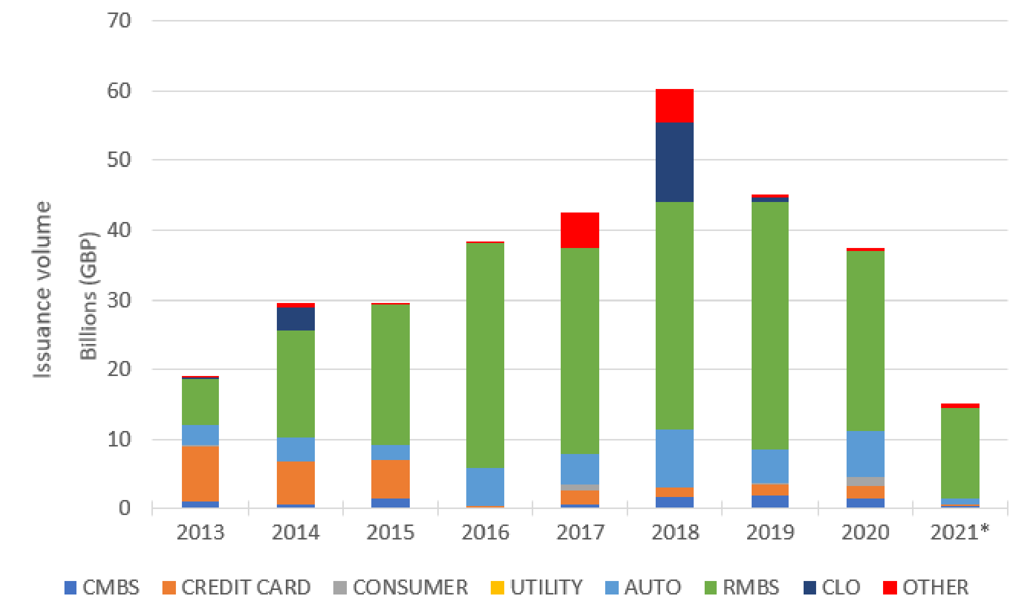
Chart 2.C: Percentage of STS GBP-denominated securitisations v. non-STS[3]



Sources: Dealogic, Bloomberg and internal calculations
**Includes data up to 31/03/2021*

2.10 Since the Sec Reg came into effect, the UK securitisation market has been dominated by traditional asset classes, such as residential mortgage-backed securities (RMBS) and auto asset-backed securities (see Chart D).

Chart 2.D: Volume of GBP-denominated securitisation issuance by asset classes



Sources: Dealogic, Bloomberg and internal calculations
**Includes data up to 31/03/2021*

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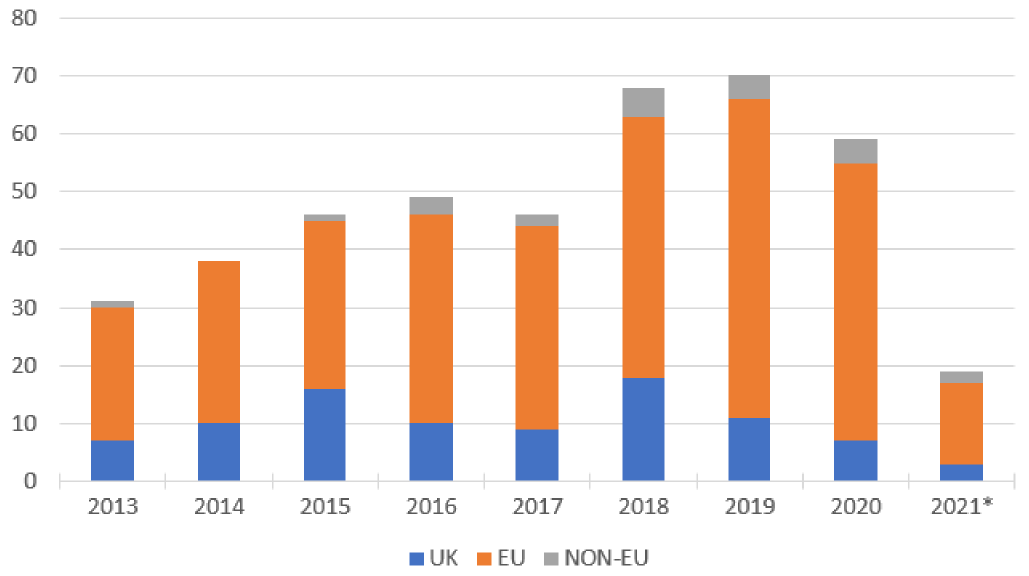
3 Note securitisations could only be designated as STS after the Sec Reg applied from 1 January 2019. This chart shows the percentage of GBP-denominated securitisations issued between 2013-2018 that have received STS designation, but were originated before the Sec Reg took effect.

2.11 Since at least 2013, the majority of UK securitisation transactions are listed on exchanges outside the UK (see Chart E). To the extent that this affects the UK securitisation market, readers are invited to respond to the questions at the end of Chapter 4 on private disclosures, which seeks input on the considerations involved in deciding where to list transactions.

Chart 2.E: Listing of GBP-denominated securitisations by number of deals



Sources: Dealogic, Bloomberg and internal calculations
**Includes data up to 31/03/2021*

Securitisation and the real economy

2.12 Securitisation is an important component of UK capital markets. It can provide more diversified funding options and reduce funding costs for banks and other lenders. Securitisation can also support banks to free up capital and increase their capacity for new lending.

2.13 Consequently, securitisation is able to help UK businesses. SMEs that do not have direct access to capital markets especially stand to benefit from reduced business funding costs, a greater availability of credit and more favourable lending conditions (although there is limited evidence that SME loans are currently securitised on a large scale).

2.14 SMEs are an integral part of the UK economy. At the start of 2020, they made up more than 99% of total businesses in the UK, and they account for a substantial proportion of employment.[4] Nevertheless, limited access to bank loans and capital markets, in addition to a lack of diversified funding channels, remain challenging for SME financing.

2.15 We would like to understand how securitisation could better contribute to the development of UK SMEs and to the UK economy more broadly, as well as what changes to the Sec Reg could support these developments.

4 UK Small Business Statistics

Interconnectedness and financial stability

2.16 The fallout from the GFC highlighted the ways in which a poorly regulated and opaque securitisation market can cause harm to the financial sector, wider economy and individuals.

2.17 The potential for institutional interconnectedness to impinge on financial stability is not a risk that is unique to securitisation. But, compared to traditional financial assets, securitisation's relative complexity can make it difficult to assess, measure and manage the risks and impacts of interconnectedness related to it. As such, the risks that arise from securitisation need to be accounted for to ensure the safety and soundness of the financial system, and to ensure that securitisation is used in a way that benefits businesses and consumers.

2.18 The Sec Reg includes important provisions to improve the transparency of securitisations and reduce any unnecessary complexity. Article 7 requires that securitisation manufacturers make information on a securitisation available to holders of a securitisation position. Article 5 requires institutional investors to conduct due diligence prior to holding any securitisation position and Article 8 bans re-securitisation.

2.19 HM Treasury invites responses on the following questions. These will inform understanding of the effects of the Sec Reg and other factors – chiefly Covid-19 and EU Exit – on the three main areas discussed in this chapter: the functioning of the UK's securitisation market; securitisation's contribution to the UK's real economy; and the effects of the interconnectedness between financial institutions involved in securitisation on financial stability.

Overall effects of the Securitisation Regulation

For investors

1. What are your considerations for investing in an STS versus non-STS securitisation?
2. What impact, if any, has the Sec Reg had on your investment decisions for investing in a securitisation position, and why?
3. What changes to the Sec Reg would encourage you to invest more in securitisations of SME exposures?

For all respondents

Market functioning

4. How, in your view, has the introduction of the Sec Reg affected the UK's securitisation market since it took effect on 1 January 2019?
5. In your views, has any ambiguity around the geographical scope of the Sec Reg's requirements impeded securitisation transactions? If so, what clarifications could be helpful?
6. How do you think the UK securitisation market has performed in comparison to other jurisdictions, both:

  a. Since the GFC, and
  b. In response to Covid-19?

7. If you have not originated, issued or invested in an STS compliant securitisation yet, what were the main reasons?
8. If you have previously chosen not to designate a securitisation as STS even where the transaction was likely to qualify as STS, what were your reasons?
9. What are currently, in your view, the main impediments to the growth of the UK's STS market?

Contribution to the real economy

10. How do you think securitisation could better support the financing of the real economy, in particular SMEs? What specific measures would support this?

Interconnectedness and financial stability

11. How, in your view, has the introduction of the Sec Reg affected the interconnectedness of financial institutions in the UK?
12. How could the Sec Reg do more to address the risks that securitisation activity in the UK poses to financial stability?

Other factors

13. To what extent have different Covid-19 measures affected the performance of the UK securitisation market?
14. How, in your view, has EU Exit impacted the UK securitisation market?

Chapter 3

Risk retention

3.1 Risk retention requirements aim to better align the incentives of securitisation manufacturers and investors. They were implemented to fix deficiencies in the securitisation regime that played a key role in the GFC.

3.2 Article 6 of the Sec Reg sets out the risk retention requirements, including that the originator, sponsor or original lender must always hold at least 5% of the nominal value of the securitisation in accordance with prescribed methods, or 'modalities'. As such, the originator, sponsor or original lender will face a loss if the securitisation incurs a loss. This reduces negative incentives around implementing insufficient due diligence procedures or lending purely to securitise the underlying exposures without retaining any risk.

3.3 The Sec Reg's Article 9 provisions require originators, sponsors and original lenders to use the same credit granting criteria for underlying exposures that will not be securitised as they do for those that will be securitised. The risk retention requirements, along with these provisions, aim to ensure robust standards are adhered to for underlying exposures intended to be securitised.

The review clause

3.4 Article 46(2)(b) of the Sec Reg requires HM Treasury to assess:

> *"The differences in the use of the modalities referred to in Article 6(3)…If the findings show an increase in prudential risks caused by the use of the modalities referred to in points (a), (b), (c) and (e) of Article 6(3), then suitable redress shall be considered"*

3.5 Article 6(3) of the Sec Reg sets out the five risk retention modalities that securitisation manufacturers can choose from.[5] All of these involve retaining no less than 5% net economic interest in the securitisation. Broadly speaking, these fall into two buckets:

a. 'vertical': where the manufacturer retains no less than 5% of the value of every tranche (or of each underlying exposure) sold to investors; and

b. 'horizontal': where the manufacturer retains the first-loss tranche (or first-loss of each underlying exposure).

3.6 The five modalities contained in the Sec Reg were not new in the UK and were originally contained in the CRR. When the Sec Reg was legislated for in the EU,

[5] This includes Article 6(3)(d) which is not a part of the review clause as it relates to the modality which sees originators, sponsors or original lenders retain the most risk: the first loss tranche.

HM Treasury and the financial services regulators determined these modalities were still fit-for-purpose, which industry was broadly supportive of.

3.7 In practice, HM Treasury understands that different modalities tend to be used for different purposes and that both horizontal and vertical risk retention modalities are commonly used by market participants in the UK.

3.8 HM Treasury invites responses on the following questions to support it in ascertaining whether these modalities remain appropriate, as well views on questions related to the PRA's ongoing consultation on the securitisation of Non-Performing Loans (NPLs).[6]

Risk retention

For manufacturers

15. Does the risk retention framework effectively balance prudence and market functioning? If not, how could it be improved?

16. Which modalities do you use and what motivates this? How many securitisations (volume & value) have you used each modality for?

For investors

17. Do you consider the risk retention modality when making investment decisions?

For all respondents

18. What is the impact of the risk retention rules on securitisations of NPLs?

19. In light of the PRA's ongoing consultation on the securitisation of NPLs, would the effectiveness of NPL securitisation be enhanced if the servicer was allowed to fulfil the risk retention requirement?

[6] CP10/21 - Implementation of Basel standards: Non-performing loan securitisations | Bank of England

Chapter 4

Disclosure requirements for private securitisations

4.1 Disclosure of information relating to a securitisation is crucial. It enables investors in securitisation positions to effectively conduct due diligence and understand the risks involved. It also allows for the competent authorities to monitor the functioning of securitisation markets.

4.2 Article 7 of the Sec Reg sets out disclosure requirements that apply to all securitisations. It requires the manufacturers of a securitisation to make available certain information to investors in securitisation positions, competent authorities and, upon request, to potential investors.

4.3 The information that needs to be disclosed includes:

a. Information on the underlying exposures;

b. Documentation that is essential to understanding the securitisation transaction;

c. An STS notification (where relevant);

d. Regular investor reports, including relevant data on the credit quality and performance of underlying exposures, trigger events, cash flow modelling and information about risk retention; and

e. Inside information which the manufacturers are required to make public, or information on significant events, such as material breaches of obligations under the securitisation transaction documents and/or changes in the securitisation, such as its structural features or risk characteristics.

4.4 The Sec Reg distinguishes between 'public' and 'private' securitisations. Private securitisations are those which do not require a prospectus to be prepared in relation to a securitisation transaction under section 85 FSMA and accompanying FCA rules, while public securitisations are all other securitisations.

4.5 Private securitisations typically include a broad range of securitisations, such as ABCP transactions and programmes, or other types of private financing arrangements. Private securitisations also include arrangements that only involve one institutional investor (sometimes referred to as 'bilateral' transactions), or arrangements where the investor might be the originator or sponsor, or is within the same group or consolidation structure as the originator or sponsor (sometimes referred to as 'intra-group' transactions).

4.6 For public securitisations within the scope of the Sec Reg, Article 7 requires that manufacturers disclose all relevant information using a Securitisation Repository (SR) that is registered and supervised by the FCA. Where no SR is registered yet, the information must be disclosed by means of a website. For private securitisations, there is no prescribed mechanism for manufacturers to disclose this information to investors or to the competent authority.

4.7 Alongside the requirements in the Sec Reg, additional requirements on disclosures, including the relevant templates for disclosure, are set out in accompanying onshored Technical Standards.[1]

Review requirement

4.8 Article 46(2)(c) of the Sec Reg requires HM Treasury to assess:

> *"Whether there has been a disproportionate rise of the number of transactions referred to in the third subparagraph of Article 7(2),[2] since the application of this Regulation and whether market participants structured transactions in a way to circumvent the obligation under Article 7 to make available information through securitisation repositories"*

4.9 Article 46(2)(d) of the Sec Reg requires HM Treasury also to assess the disclosure requirements for private securitisations, in particular:

> *"Whether there is a need to extend disclosure requirements under Article 7 to cover transactions referred to in the third subparagraph of Article 7(2) and investor positions"*

4.10 Since the start of 2020, the number of STS notifications to ESMA for private securitisations has exceeded those of public securitisations.[3]

4.11 In addition, since the end of the EU Exit transition period in January 2021, the number of UK private securitisations (STS and non-STS) has increased. This is, at least in part, a result of UK securitisations listing outside of the UK and thereby qualifying as private securitisations.

4.12 HM Treasury would like to understand the drivers for the increase in private securitisations, including the UK transactions listed outside of the UK and the consequences for the access by, and level of information disclosed to, investors. Therefore, HM Treasury invites responses on the following questions.

Disclosure requirements for private securitisations

For manufacturers

20. What are your considerations in deciding whether to issue a private or public securitisation?
21. What are your considerations in deciding where to list your securitisation, both in the UK and in other jurisdictions?

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1 Commission Delegated Regulation EU (2020/1224) and Commission Implementing Regulation (EU) 2020/1225.

2 This refers to private securitisations that do not require a prospectus.

3 See ESMA report p. 32 figure 2 Quarterly evolutions of the STS notifications (Q1 2019 to Q4 2020) jc_2021_31_jc_report_on_the_implementation_and_functioning_of_the_securitisation_regulation_1.pdf (europa.eu)

22. How do the costs and benefits of listing securitisations vary by jurisdiction?

For investors

23. Do you consider the disclosure requirements (both the content and format) for private securitisations to be sufficiently useful? If not, how could they be improved? Please answer with reference to:

    a. Bilateral securitisations;

    b. Intragroup securitisation transactions; and/or

    c. Any other private securitisation transactions.

24. Do you find the usefulness and quality of the information you receive on a securitisation to be materially different when available through an SR, to when it is not made available through an SR?

25. Does the fact that a securitisation is not reported through an SR impact your ability or willingness to assess credit risk and/or invest in a securitisation?

For all respondents

26. Do you consider there would be any benefit to extending disclosure requirements for public securitisations to private securitisations, specifically:

    a. The requirement to make information available through SRs; and/or

    b. The requirement to fill in the templates on inside information or significant event information, as contained in Annex 14 and Annex 15 of the onshored Technical Standards?

Chapter 5

STS equivalence regime

5.1 Equivalence is an autonomous mechanism by which one jurisdiction can recognise relevant standards in another jurisdiction as equivalent to their own. Equivalence provides for regulatory relief by removing duplicative requirements on cross-border business or exposures, or directly allowing or easing market access arrangements for cross-border business. As a stable and reliable arrangement, equivalence may also bring the benefits of more structured cooperation with overseas authorities and that of promoting regulatory convergence.

5.2 HM Treasury and the financial services regulators consider the STS framework to be an important part of a robust and transparent securitisation market. However, there is currently no equivalence regime in the Sec Reg for recognising overseas securitisations as STS in the UK.

5.3 Under the Sec Reg, in order for a securitisation to be designated as STS, it must fulfil requirements set out in the Sec Reg as summarised in paragraph 1.13, including that the originator and sponsor (or, in the case of ABCP programmes and transactions, just the sponsor) is established in the UK (referred to within this chapter as 'UK STS'). Therefore, where originators and sponsors involved in a securitisation are established outside the UK, the securitisation cannot be designated as STS and, consequently, UK investors cannot get preferential capital treatment for that securitisation.

5.4 However, the Sec Reg provides for a transitional period until 31 December 2022 with respect to securitisations which meet the relevant STS criteria and are designated as STS under the EU Sec Reg (such securitisations are referred to in this chapter as 'EU STS'). This was part of the government's approach to amending retained EU legislation under the EU (Withdrawal) Act 2018.

5.5 Article 46 (2)(e) requires HM Treasury to assess:

> *"Whether in the area of STS securitisations an equivalence regime could be introduced for third-country originators, sponsors and SSPEs, taking into consideration international developments in the area of securitisation, in particular initiatives on simple, transparent and comparable securitisations"*

Introduction of an STS equivalence regime

5.6 A well-functioning securitisation market can increase the resilience and efficiency of the financial system more widely. HM Treasury views the STS framework in the Sec Reg as playing an important role in a well-functioning securitisation market, encouraging a simple, transparent, and standardised securitisation market in the UK. HM Treasury considers this to also be an important aim for securitisation markets globally.

5.7 As such, HM Treasury has the following international objectives related to STS securitisations:

a. Promoting the development of robust securitisation frameworks internationally, thereby encouraging STS securitisations as an important element of well-functioning markets globally;

b. Enabling the recognition of overseas STS securitisations in the UK where appropriate, thereby providing UK investors with more choice; and

c. Incentivising investment in UK STS securitisations, thereby providing UK securitisation manufacturers with greater demand and greater liquidity for their securitisation transactions.

5.8 There are a range of tools which HM Treasury could use to give effect to these aims. However, establishing a regime that operates under HM Treasury's equivalence framework may be most suitable. An equivalence regime would allow HM Treasury to make unilateral, outcomes-based determinations through domestic mechanisms. These mechanisms provide for a flexible and, where necessary, tailored approach. For example, they could be used to grant equivalence determinations for certain types of STS securitisations. Equivalence is also regime-specific, rather than over-arching, and so it can consider the particular nature of STS securitisations in the design of the equivalence regime. As such, considerations that may be relevant to STS securitisations are listed in paragraphs 5.16 to 5.22.

5.9 Equivalence can be a key driver to encourage regulatory convergence around international standards, therefore serving the first objective above. If the UK introduced an STS equivalence regime, that could encourage other jurisdictions to adopt equivalent STS frameworks, ultimately leading to a more transparent and standardised international securitisation market.

5.10 The second objective could be promoted if an equivalence determination were made for a jurisdiction under a new UK STS equivalence regime, allowing securitisations issued in that jurisdiction to be recognised as STS in the UK. This could increase the supply of STS available to UK investors, offering them more choice and supporting them to diversify their portfolios.

5.11 The third objective could be promoted if UK STS were recognised in overseas jurisdictions, and therefore overseas investors were able to benefit from preferential capital treatment for investing in UK STS. In turn, this could increase the demand for, and liquidity of, UK STS. The introduction of a UK STS equivalence regime could signal openness and encourage other jurisdictions to recognise UK STS. Given these potential benefits, HM Treasury is considering whether an STS equivalence regime should be introduced.

Principles and processes of the UK's equivalence regime

5.12 An STS equivalence regime would establish powers for HM Treasury to make equivalence determinations in respect of another jurisdiction's securitisation framework. Any new equivalence regime would be consistent with the principles and processes set out in the November 2020 Guidance Document for the UK's Equivalence Framework for Financial Services ('equivalence guidance document').[1]

[1] Guidance Document for the UK's Equivalence Framework for Financial Services.

5.13 HM Treasury is responsible for making equivalence determinations and does so with the wider regulatory and prudential interests of the UK in mind. If an STS equivalence regime were introduced in the UK, equivalence assessments and determinations would therefore be in line with the stated equivalence principles in the equivalence guidance document.

5.14 Additionally, in accordance with the equivalence guidance document, when HM Treasury undertakes an assessment of a jurisdiction before making an equivalence determination, it can request technical advice or information from the financial services regulators to inform its assessment. If, following its assessment, HM Treasury is satisfied that an overseas jurisdiction is equivalent on an outcomes basis, equivalence determinations are given effect through secondary legislation, specifically by a Statutory Instrument. This process would apply to an STS equivalence regime if it were introduced.

Considerations in STS equivalence assessments

5.15 Equivalence regimes in UK legislation often include matters HM Treasury must consider when making equivalence determinations. If a new STS equivalence regime were introduced, there could be a number of matters that HM Treasury could be required to consider in its assessment of an overseas jurisdiction's securitisation framework, before making an equivalence determination. HM Treasury is seeking views on what these considerations could be, as set out below.

BCBS-IOSCO STC criteria and supervisory framework

5.16 A key consideration in STS equivalence assessments could be whether a jurisdiction's regulatory regime has at least implemented the BCBS-IOSCO STC criteria (as outlined in paragraphs 1.11 and 1.12) and has an equivalent supervisory and enforcement approach to that of the UK. Before making an equivalence determination, HM Treasury would therefore have to consider the regulatory and supervisory regimes in the jurisdiction being assessed against that of the UK.

5.17 This would seek to ensure that the high standard for securitisations recognised as STS in the UK, which might be able to receive corresponding preferential capital treatment, is maintained.

Supervisory Cooperation

5.18 Another key consideration for HM Treasury when undertaking an STS equivalence assessment could be whether adequate arrangements either exist currently, or can be put in place, between UK financial services regulators and overseas authorities.

5.19 If an STS equivalence regime were introduced and an equivalence determination were made under the regime, the UK financial services regulators would not be responsible, in the normal course of business, for supervising or taking enforcement action against the parties involved in STS securitisations established in the jurisdiction which has received an equivalence determination. Instead, the UK would rely on the relevant authorities in the other jurisdiction to supervise and enforce compliance. Cooperation arrangements would also enable the sharing of supervisory intelligence between the financial services regulators and overseas authorities. Therefore, supervisory cooperation with the relevant authorities in the other jurisdiction is likely to be a crucial feature of a new STS equivalence regime.

5.20 If an STS equivalence regime were introduced, HM Treasury and the financial services regulators would need to consider how the STS notification requirement could be met for securitisations in an equivalent jurisdiction. HM Treasury would also need to consider whether any additional duties or powers would be required for HM Treasury or the financial services regulators to complement the supervisory cooperation with other overseas authorities.

Ability to recognise UK STS

5.21 A final key consideration for HM Treasury when undertaking an STS equivalence assessment could be whether UK STS can be recognised in the jurisdiction being assessed. Equivalence is a unilateral process delivered through domestic mechanisms. However, the nature of STS markets means that allowing for the recognition of certain overseas STS in the UK, without the possibility of reciprocal recognition of UK STS in that jurisdiction, could lead to an imbalance in the market. This is because unilateral recognition could create more supply of STS for UK investors, without increasing demand for UK manufacturers' STS.

5.22 Therefore, mutual recognition of STS with overseas partners should be considered as best for both securitisation investors (on the demand side) and manufacturers (on the supply side). Whether mutual recognition can be achieved could therefore be a key consideration for HM Treasury in making equivalence determinations. This could include consideration of whether the overseas jurisdiction is, or will be, able to grant equivalence, or a similar arrangement, to the UK.

Adaptation periods

5.23 HM Treasury recognises the importance of the stability of equivalence determinations, and the potential negative impact that the possibility of withdrawal can have on confidence in the overall system. When engaging in ongoing monitoring of changes in overseas jurisdictions' regimes, and considering any withdrawal of equivalence, HM Treasury would be guided by the process set out in the equivalence guidance document. This involves taking proportionate steps to monitor changes over time and taking account of the risks posed to the UK. Where equivalence is withdrawn or run down, HM Treasury might include appropriate adaptation periods to allow firms time to prepare for the changing circumstances.

5.24 As also outlined in the equivalence guidance document, HM Treasury will look to engage with affected parties to consider what an appropriate adaptation period should be. Therefore, HM Treasury is seeking views on the detail of any potential adaptation period, including on the optimal length of such a period.

5.25 HM Treasury seeks to understand views on the merits and risks of introducing an STS equivalence regime in the UK, on the potential considerations that HM Treasury must assess before making any equivalence determination, as described in this chapter, and on the features of any potential adaptation periods. To that end, HM Treasury invites responses on the following questions.

STS equivalence regime

27. To what extent has your firm benefitted from the temporary recognition of EU STS by the UK?
28. To what extent has a lack of recognition of UK STS by the EU impacted your firm?
29. Do you have views on the merits, as well as any drawbacks, of HMT introducing an STS equivalence regime?
30. Are there any mechanisms other than an STS equivalence regime which, in your view, would give effect to the policy objectives in paragraph 5.7?
31. Do you have comments on the considerations relevant to making equivalence assessments under a new STS equivalence regime, as outlined in paragraphs 5.16 to 5.22?
32. Do you consider an adaptation period accompanying any potential withdrawal of equivalence would be useful in the operation of a new equivalence regime for STS securitisation?
33. If so, would it be desirable to introduce standardised adaptation periods for STS, or are there other factors which should be considered?
34. Do you have any other views related to STS equivalence which you think should be considered?

Chapter 6

Environmental disclosure requirements

6.1 The consideration of the environmental impact of financial activities has become commonplace in discussions of a future financial sector that is more sustainable.

6.2 An increasing number of investors are seeking the disclosure of appropriate information on the environmental effects of their investments. Investors in certain securitisations subject to requirements under the Sec Reg can benefit from environmental performance information about certain underlying exposures that originators, sponsors and SSPEs must disclose.

6.3 Article 22(4) of the Sec Reg requires that, where the underlying exposures of a securitisation are residential loans or auto loans or leases, the originator and sponsor of an STS securitisation must publish the available information related to the environmental performance of the assets financed by those underlying exposures.

6.4 In addition, the onshored Technical Standards[1] on disclosure requirements under the Sec Reg require originators, sponsors and SSPEs to provide, where possible, an Energy Performance Certificate (EPC) and the name of the EPC provider for a securitisation where the underlying exposures are residential real estate loans or auto loans or leases. This specification applies to all securitisations with these underlying exposures – whether STS or non-STS securitisations, public or private.

6.5 If the EPC information is not available for assets associated with the underlying exposure being reported, it is acceptable to enter ND5 ('not applicable') for this field. This in itself does not prevent a securitisation from being designated as STS.

Review requirement

6.6 Article 46(2)(f) requires HM Treasury to assess:

> *"The implementation of the requirements provided for in Article 22(4) and whether they need to be extended to securitisation where the underlying exposures are not residential loans or auto loans or leases, with the view to mainstreaming environmental, social and governance (ESG) disclosure"*

6.7 The ambition of this review requirement is to extend the Sec Reg's current disclosure requirements on environmental performance so as to mainstream ESG disclosure. HM Treasury encourages disclosure by originators, sponsors and SSPEs of

[1] Commission Delegated Regulation EU (2020/1224) and Commission Implementing Regulation (EU) 2020/1225.

clear, verifiable and useful information in relation to ESG, whilst recognising that any potential increase in disclosure requirements should be proportionate, so as not to place excessive burden on firms.

6.8 HM Treasury would like to understand what other underlying exposures the disclosure requirements for STS securitisations could usefully be expanded to and with what information, as well as respondents' views on broader ESG disclosure.

Considerations for a future green securitisation framework

6.9 Transforming finance into a greener, more sustainable sector will be instrumental in turning the tide against climate change and biodiversity loss. A 'green' securitisation framework could support the transition to a sustainable, low carbon economy. While no consensus exists on what a green securitisation framework would look like, it could have the ambition of incentivising the use of securitisation as a method to refinance green underlying exposures.

6.10 The government is committed to playing a leading role in the fight against climate change, biodiversity loss and, where possible, accelerating the transition to a greener finance sector. The government's 2019 Green Finance Strategy sets out how it plans to align private sector financial flows with clean, environmentally sustainable and resilient growth.[2]

6.11 One example of this is the UK approach to implementing the recommendations of the Task Force on Climate-related Financial Disclosure (TCFD). In November 2020, the Chancellor announced the UK's intention to implement the TCFD recommendations on a mandatory basis across the economy by 2025, with a significant portion of requirements due to be in place by 2023.[3] The dissemination of this information should enable firms to better consider climate-related risks and opportunities as part of their investment, lending and risk management decisions.

6.12 Battling climate change is a complex challenge that requires coordinated, transnational solutions. In order for any future green securitisation framework to be as effective as possible, it must cohere with, and be supported by, the government's wider work on green finance. For example, HM Treasury is continuing to progress work on the Green Taxonomy, which will be used to determine which activities can be defined as environmentally sustainable.

6.13 In the absence of agreement over definitions and measurements of green underlying exposures, securitisation manufacturers might struggle to designate certain securitisations as green. Without a critical mass of green underlying exposures available, it would be difficult for a green securitisation market to grow.

6.14 Finally, to support any development of an effective green securitisation framework in the future, HM Treasury must also ensure that rules governing the UK's finance sector, including the securitisation market and green finance, align with international standards.

2 Green Finance Strategy

3 Chancellor sets out ambition for future of UK financial services

6.15 More immediately, HM Treasury invites responses on how the Sec Reg can support the government's green finance objectives in the near-term.

Environmental Disclosure Requirements

For manufacturers

31. If disclosure requirements on environmental performance were to apply to all underlying exposures:

    a. Is there enough information available to fulfil any such obligation?

    b. Are there any underlying exposures where the information would not be available or where it would not be proportionate to collect?

    c. What type of information on the environmental impact would you suggest (please provide as much detail as possible for different underlying exposures)?

For investors

32. In respect of current disclosure on residential mortgages and auto loans and leases:

    a. Is the environmental performance data on a securitisation's underlying exposures which you currently receive sufficiently useful?

    b. What other information would you find useful, if any?

33. In respect of underlying exposures other than residential mortgages and auto loans and leases:

    a. Are there other types of underlying exposures for which you would find it useful to have information on their environmental impact? If yes, which ones?

    b. What information would you find useful?

34. Generally:

    a. How attractive, relative to other investable ESG securities, are securitisations that disclose environmental performance information?

For all respondents

35. What additional readily available information on securitised underlying exposures could support the mainstreaming of ESG? Which underlying exposures would that impact?

36. Do you have any views on how the Sec Reg can better support the government's aims for green finance in the near future?

Chapter 7

Third party verification regime

7.1 The introduction of the STS framework in the Sec Reg created a new category of entities – Third Party Verifiers (TPVs) – which can assess the compliance of a securitisation with the STS criteria.

7.2 The services of a TPV might be used voluntarily by securitisation manufacturers to assess whether a securitisation complies with the STS criteria. Although manufacturers are not required to use a TPV, using one can help provide confidence in the compliance with the STS criteria.

7.3 Article 27 of the Sec Reg stipulates that the use of a TPV does not affect the liability of the manufacturers in respect of their obligations under the Sec Reg, including their obligations in relation to the designation of a securitisation as STS. This means the manufacturers are still required to ensure that a given securitisation meets the STS criteria under the Sec Reg, and that they have notified the FCA of the STS securitisation. The use of a TPV also does not affect the due diligence obligations imposed on institutional investors under the Sec Reg.

7.4 In order to assess a securitisation's compliance with the STS criteria, a TPV must be authorised by the FCA.[1] Article 28 of the Sec Reg sets out the conditions that need to be met in order for a TPV to be authorised. Among other things, a TPV cannot be a credit institution, an insurance undertaking, an investment firm or a credit rating agency. Additionally, it can only charge non-discriminatory and cost-based fees for its services.

7.5 The Sec Reg also requires TPVs to ensure that the performance of any of their other activities, or other conflicts of interest, do not compromise the independence of their STS assessments. Additionally, it imposes requirements on the professional qualifications, knowledge, experience and independence of its management body, and it requires certain operational safeguards and internal processes. Material non-compliance with any of the conditions can result in a withdrawal of authorisation by the FCA.

Review requirement

7.6 Article 46(2)(g) requires HM Treasury to assess:

> *"The appropriateness of the third-party verification regime as provided for in Articles 27 and 28, and whether the authorisation regime for third parties provided for in Article 28 fosters sufficient competition among third parties and whether changes in the supervisory framework need to be introduced in order to ensure financial stability"*

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[1] For more information on how the FCA authorises TPVs, see [Third Party Verifier (TPV).](#)

7.7 There is currently only one TPV authorised to verify STS compliance in the UK. HM Treasury would like to understand the reasons for, and implications of, this. To that end, HM Treasury invites responses on the following questions.

Third party verification regime

For manufacturers

39. What are your considerations, including costs and benefits, when deciding whether to use a TPV to verify STS compliance?

For investors

40. When making investment decisions, how important is it to you that the compliance with the STS criteria is verified by a TPV? Please explain why.

For all respondents

41. Do you think the TPV regime under the Sec Reg is appropriate? In particular:

    a. What are your views on the impact of the authorisation process for TPVs on the level of competition in the market?

    b. What do you think could help foster competition?

    c. Given the role that TPVs play in the STS market and the current number of authorised TPVs, do you think there might be any risk of harm arising from over-reliance on the assessment of a TPV?

    d. Do you think the TPV regime should be amended to address those risks?

Chapter 8

The role of SSPEs

8.1 SSPEs play a critical role in effectively facilitating securitisations in the UK. They manage the process of transferring underlying exposures from the originator, issuing securities that are 'tranched' and sold to investors, and thereafter managing the cashflow of the underlying exposures between sellers (i.e. the originators or original lenders) and investors.

8.2 SSPEs are subject to specific regulatory requirements under the Sec Reg. For all securitisations, Article 7 sets out requirements for SSPEs to make information available to investors and competent authorities. For STS securitisations, Articles 20 and 24 set out requirements for SSPEs. These include requirements to ensure that even if the originator of the underlying exposures goes into insolvency proceedings, the loans transferred to the SSPE for securitisation are not subject to severe clawback provisions by the liquidator of the originator. In this way, the SSPE is 'insolvency remote'.

8.3 Additionally, for STS securitisations, Articles 21(4) and 24(17) seek to prevent cash from becoming trapped in SSPEs, and to ensure that the SSPE does not run out of funds or run into other difficulties. If an enforcement or acceleration notice has been given, as long as there is a stream of income coming into the SSPE – which will be the case as long as the SSPE is performing its functions – then it should have the income it requires to operate.

Review requirement

8.4 Article 46(2)(h) requires HM Treasury to assess:

> *"Whether there is a need to complement the framework on securitisation set out in this Regulation by establishing a system of limited licensed banks, performing the functions of SSPEs and having the exclusive right to purchase exposures from originators and sell claims backed by the purchased exposures to investors"*

8.5 HM Treasury understands that the focus of this element of the review clause asks whether a system involving fewer entities (e.g. a number of limited licensed banks) could better perform the functions of SSPEs. HM Treasury is therefore assessing whether the provisions in the Sec Reg that relate to SSPEs are sufficient to ensure:

a. transparency in relation to securitisation activities taking place across the entirety of the market, including enabling the financial services regulators and investors to view the interconnections and aggregate activities of specific originators (e.g. if an originator uses more than one SSPE); and

b. an insolvency remote regime where SSPEs do not introduce additional risk into the process of securitisations in the event of one of the relevant parties entering insolvency.

8.6 A system involving fewer entities could involve specific limited licensed banks (LLBs) taking on the role of SSPEs, effectively centralising the process amongst a smaller number of entities. In theory, this could make the regime more transparent – through the reduced number of actors undertaking the SSPE functions – and enable each party to a securitisation to see a larger portion of the market. However, this could also come at the cost of significant market disruption and the creation of an uncompetitive system. Therefore, such a system could be an unattractive proposition, unless there is a significant SSPE market failure.

8.7 These LLBs could also have a bespoke supervisory and insolvency regime. While HM Treasury agrees that a bespoke regime could be considered, there might not be need for a bespoke supervisory and insolvency regime to only be suitable for LLBs: a bespoke regime could apply, and indeed does already to some extent through the existing Sec Reg, to SSPEs.

8.8 It is worth noting that, in relation to the transparency requirements referred to in paragraph 8.2, there is explicit provision for these within the Sec Reg via SRs. While the UK is yet to authorise a SR, these will form the crucial role of acting as a centralising hub for data on transactions across originators and investors. Consequently, SRs could provide enhanced transparency for securitisation activities taking place across the entirety of the market.

8.9 On this basis, HM Treasury invites responses on the following questions.

The role of SSPEs

For investors

42. SSPEs have specific obligations under Article 7 to ensure sufficient provision of information to investors. Do you consider this information to be sufficient to be able to ascertain a full view of the transactions, including the level of interconnectedness of institutions (if so desired)?

43. Do you think that this will be improved by the existence of authorised SRs?

For all respondents

44. As an originator/sponsor/investor, how many SSPEs do you interact with on a per transaction/programme basis?

45. Do you have any concerns with the robustness of the SSPE regime regarding its ability to:

    a. ensure it is insolvency remote; and

    b. ensure it has sufficient funds to continue operations (both generally and in the context of an enforcement or acceleration notice)?

46. Should HM Treasury introduce a system of LLBs to replace and centralise the functions of SSPEs?

Chapter 9

Alternative Investment Fund Managers – Extraterritoriality

9.1 The Sec Reg requires that institutional investors perform due diligence prior to holding a securitisation position, in order to assess the risks involved in a securitisation. These due diligence requirements, as set out in Article 5, require that, among other things, institutional investors carry out the following activities: verify certain characteristics regarding a securitisation's underlying exposure and its structure; have processes in place to evaluate the risks involved in a securitisation position; verify that they have access to relevant disclosure information; and, in the case of an STS securitisation, verify that the securitisation meets the STS criteria.

9.2 It's important that these due diligence requirements are met, so that the UK securitisation market can benefit from the participation of institutional investors who are able to evaluate the risks of the securitisations and make informed investment decisions. The due diligence requirements are a key part of the Sec Reg's aim to apply a risk-sensitive prudential framework to securitisation.

9.3 Under the Sec Reg, the due diligence requirements apply to all institutional investors, including Alternative Investment Fund Managers (AIFMs). This means that the requirements for institutional investors under the Sec Reg, in particular due diligence requirements, apply to all AIFMs that market or manage AIFs in the UK, as discussed below.

9.4 HM Treasury considers the Sec Reg's definition of institutional investor as it relates to AIFMs could be amended and invites respondents to share views on this proposed change.

The regulation of AIFMs

9.5 AIFMs are legal persons in the business of managing alternative investment funds (AIFs), which can exist for saving or income generating purposes and include private equity funds, hedge funds and real estate funds. AIFMs are subject to regulation derived from the Alternative Investment Fund Managers Directive 2011 (AIFMD), including the Alternative Investment Fund Managers Regulations 2013 (AIFMR), as onshored, which includes requirements relating to authorisation, administration and marketing.

9.6 In the UK, a person must not carry on the regulated activity of managing an AIF under regulation 51ZC of the FSMA 2000 (Regulated Activities Order) 2001 unless they are authorised by the FCA, exempt or an exclusion applies. Depending on the value of the assets under management, an AIFM might either be authorised or registered with the FCA.

9.7 Before the Sec Reg applied, securitisation activity carried out by AIFMs was regulated by the AIFMD. The Sec Reg repealed sectoral-specific legislation relating to securitisation and consolidated relevant requirements.

Current difficulties with the Sec Reg's definition

9.8 The definition of institutional investor in Article 2(12)(d) of the Sec Reg includes:

> *"An AIFM (as defined in regulation 4(1) of the Alternative Investment Fund Managers Regulations 2013) which markets or manages AIFs (as defined in regulation 3 of those Regulations) in the United Kingdom"*

9.9 The definition set out above means that any unauthorised, non-UK AIFMs managing or marketing an AIF in the UK could fall under the scope of the definition of institutional investor in the Sec Reg. As a result, such AIFMs would be subject to the relevant requirements under the Sec Reg, including on due diligence, even if an unauthorised, non-UK AIFM is merely marketing in the UK, because the definition does not specify the jurisdiction in which the AIFM must be authorised or have its registered office.

9.10 The Sec Reg's definition of institutional investor, as it applies to unauthorised, non-UK AIFMs, is unique: no other non-UK institutional investors in this position are required to comply with the Sec Reg's due diligence standards.

9.11 This definition raises potential extraterritorial challenges with regards to enforcement and supervision. It can be difficult for the FCA to supervise or enforce the due diligence requirements, and any other requirements under the Sec Reg, on certain unauthorised, non-UK AIFMs, because such firms are likely to be outside the scope of the FCA's regulatory jurisdiction.

9.12 Additionally, HM Treasury considers that it might be disproportionate in terms of consequences to require that an unauthorised, non-UK AIFM become subject to due diligence requirements under the Sec Reg. As such, the imposition of the Sec Reg's due diligence requirements on certain non-UK AIFMs could disincentivise them from seeking investors in the UK, which might impinge on the competitiveness of the UK's financial market.

9.13 HM Treasury, therefore, considers that the definition of institutional investor should be amended to take certain unauthorised, non-UK AIFMs out of scope of the Sec Reg due diligence requirements. Responses on this are welcomed.

Alternative investment fund managers – Extraterritoriality

47. Do you have any comments on HM Treasury's views regarding the definition of institutional investor under the Sec Reg, as it applies to AIFMs?

48. What are the practical effects of the due diligence requirements for non-UK AIFMs managing or marketing in the UK?

49. Are there any perceived benefits of the extraterritorial requirements?

50. Do respondents have any concerns with amending this definition? Would this risk any unintended consequences that HMT should be aware of?

Annex A

Review requirement in the Securitisation Regulation

Article 46 Review

1. The Treasury must, no later than 1st January 2022, review the functioning of this Regulation and lay a report before Parliament.

The Treasury must review the functioning of this Regulation if, at any time before that date, the Treasury consider that progress has been made in third countries other than the EEA States with respect to the implementation of international standards on simple, transparent and comparable securitisation.

Where the Treasury review the functioning of this Regulation in response to such progress, the Treasury must lay a report before Parliament.

2. That report shall assess:

(a) the effects of this Regulation, including the introduction of the STS securitisation designation, on the functioning of the market for securitisations in the Union, the contribution of securitisation to the real economy, in particular on access to credit for SMEs and investments, and interconnectedness between financial institutions and the stability of the financial sector;

(b) the differences in use of the modalities referred to in Article 6(3), based on the data reported pursuant to point (e)(iii) of the first subparagraph of Article 7(1). If the findings show an increase in prudential risks caused by the use of the modalities referred to in points (a), (b), (c) and (e) of Article 6(3), then suitable redress shall be considered;

(c) whether there has been a disproportionate rise of the number of transactions referred to in the third subparagraph of Article 7(2), since the application of this Regulation and whether market participants structured transactions in a way to circumvent the obligation under Article 7 to make available information through securitisation repositories;

(d) whether there is a need to extend disclosure requirements under Article 7 to cover transactions referred to in the third subparagraph of Article 7(2) and investor positions;

(e) whether in the area of STS securitisations an equivalence regime could be introduced for third-country originators, sponsors and SSPEs, taking into consideration international developments in the area of securitisation, in particular initiatives on simple, transparent and comparable securitisations;

(f) the implementation of the requirements provided for in Article 22(4) and whether they need to be extended to securitisation where the underlying exposures are not residential loans or auto loans or leases, with the view to mainstreaming environmental, social and governance disclosure;

(g) the appropriateness of the third-party verification regime as provided for in Articles 27 and 28, and whether the authorisation regime for third parties provided for in Article 28 fosters sufficient competition among third parties and whether changes in the supervisory framework need to be introduced in order to ensure financial stability; and

(h) whether there is a need to complement the framework on securitisation set out in this Regulation by establishing a system of limited licensed banks, performing the functions of SSPEs and having the exclusive right to purchase exposures from originators and sell claims backed by the purchased exposures to investors.

Annex B
Glossary

AIFM – in the UK, Alternative Investment Fund Managers (AIFMs) are legal persons that have been authorised or registered by the Financial Conduct Authority as such and whose regular business is managing one or more alternative investment funds (AIFs) which:

(i) raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and

(ii) is not a UCITS.

ABCP – Asset-backed commercial paper (programme or transaction): as defined in Article 2(7) and 2(8) of the Sec Reg, a programme of securitisations the securities issued by which predominantly take the form of asset-backed commercial paper with an original maturity of one year or less; or a transaction within an ABCP programme.

BCBS – the Basel Committee on Banking Supervision (BCBS) which sets global prudential standards for internationally active banks (the Basel framework).

CRR, or the Capital Requirements Regulation – Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012. Following the UK's withdrawal from the EU, the CRR forms part of retained EU legislation.

CRR amending regulation – Regulation (EU) 2017/2401 which amended and updated the CRR, including methods to calculate risk weights and preferential treatment for STS securitisations meeting certain criteria.

EU Exit transition period – the one-year period from 31 December 2019 following the UK's departure from the European Union during which rules on trade, travel, and business for the UK and EU continued to apply.

EU Sec Reg, or the EU Securitisation Regulation – Regulation (EU) 2017/2402 as it applies in the EU, which sets out rules for the regulation of securitisations related to conduct (rather than prudential treatment of securitisation exposures).

Institutional investor – as defined in Article (2)(12) of the Sec Reg, an investor holding a securitisation position who is one of the following: an insurance undertaking, a reinsurance undertaking, an occupational pension scheme, an AIFM, a management company, a UCITS, or a CRR firm.

IOSCO – the International Organisation of Securities Commissions: a body comprising the world's major securities regulators responsible for setting securities standards.

Original lender – as defined in Article 2(20) of the Sec Reg, an entity which, itself or through related entities, directly or indirectly, concluded the original agreement which created the obligations or potential obligations of the debtor or potential debtor giving rise to the exposures being securitised.

Originator – as defined in Article 2(3) of the Sec Reg, an entity which

> (a) itself or through related entities, directly or indirectly, was involved in the original agreement which created the obligations or potential obligations of the debtor or potential debtor giving rise to the exposures being securitised; or
>
> (b) purchases a third party's exposures on its own account and then securitises them.

Risk retention – the proportion of the securitisation which the originator, sponsor, or original lender need to retain on an ongoing basis (as required under Article 6(1) of the Sec Reg).

Securitisation Exit SI – The Securitisation (Amendment) (EU Exit) Regulations 2019 which addressed deficiencies in, amongst other things, the Sec Reg and CRR amending regulation as part of the government's approach to amending retained EU legislation.

Securitisation manufacturer – a collective term for the parties involved in issuing a securitisation, so the originator, the SSPE, and the sponsor.

Securitisation position – as defined in Article 2(19) of the Sec Reg, an exposure to a securitisation.

Sec Reg, or the Securitisation Regulation – Regulation (EU) 2017/2402 as amended by, amongst other things, the Securitisation Exit SI, as part of the government's approach to amending retained EU legislation. This sets out rules for the regulation of securitisations related to conduct (rather than prudential treatment of securitisation exposures).

Securitisation Repository (SR) – as defined in Article 2(23) of the Sec Reg, a legal person that centrally collects and maintains the records of securitisations.

Securitisation Special Purpose Entity (SSPE), also known as Special Purpose Vehicle (SPV) – as defined in Article 2(2) of the Sec Reg, a corporation, trust or other entity, other than an originator or sponsor, established for the purpose of carrying out one or more securitisations.

Servicer – as defined in Article (2)(13) of the Sec Reg, an entity that manages a pool of underlying credit exposures on a day-to-day basis.

Sponsor – as defined in Article 2(5) of the Sec Reg, a credit institution or investment firm, whether located in the United Kingdom or in a third country, which

> (a) is not an originator and
>
> (b) either –

(i) establishes and manages an ABCP programme or other securitisation that purchases exposures from third party entities; or

(ii) establishes an ABCP programme or other securitisation that purchases exposures from third party entities and delegates the day-to-day active portfolio management involved in that securitisation to an entity which is authorised to manage assets belonging to another person in accordance with the law of the country in which the entity is established.

STC securitisation – the BCBS-IOSCO-designed criteria for simple, transparent and comparable (STC) securitisations.

STS securitisation – simple, transparent and standardised (STS) securitisations, as introduced in the Sec Reg. The STS framework in the Sec Reg is in line with the BCBS-IOSCO STC criteria.

Traditional securitisation (also known as non-ABCP securitisation) – as defined in Article 2(9) of the Sec Reg, a securitisation involving the transfer of the economic interest in the exposures being securitised through the transfer of ownership of those exposures from the originator to an SSPE or through sub-participation by an SSPE, where the securities issued do not represent payment obligations of the originator.

UCITS – in the UK, 'Undertakings for the Collective Investment in Transferable Securities' (UCITS) are funds that have been authorised by the Financial Conduct Authority as such. In the EU, UCITS are funds that are authorised by their national competent authority under the EU's UCITS Directive (2009/65/EC).

Underlying exposure – in the context of securitisation, the set of obligations an original borrower has to their creditor, including loans, trade receivables and other exposures, which an originator can pool together and have securitised.

HM Treasury contacts

This document can be downloaded from www.gov.uk

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