# CP15/23 – Securitisation: General requirements

Consultation paper 15/23

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## Content

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Responses are requested by Monday 30 October 2023.

**Please address any comments or enquiries by email to:**
**CP15_23@bankofengland.co.uk.**

**Alternatively, please address any comments or enquiries to**:
Securitisation Policy team
Prudential Regulation Authority
20 Moorgate
London
EC2R 6DA

# 1. Overview

1.1 The Securitisation Regulation is retained EU legislation that aims to address behavioural risks in securitisation markets. Supervisory responsibility for the Securitisation Regulation is currently shared primarily between the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA). Following the enactment of the Financial Services and Markets Act 2023 (FSM Act 2023), HM Treasury (HMT) plans that most firm-facing provisions of the Securitisation Regulation will be replaced with PRA and/or FCA rules.

1.2 This consultation paper (CP) sets out the PRA's proposed rules to replace retained EU law requirements on PRA-authorised persons in:

- provisions of the Securitisation Regulation for which the PRA has supervisory responsibility;
- the related Risk Retention Technical Standards; and
- the related Disclosure Technical Standards.

1.3 This CP also covers adjustments to the scope of PRA supervisory statement (SS) 10/18 – **Securitisation: General requirements and capital framework**. Further, it explains the circumstances in which the PRA envisages using a new power under section 138BA of the Financial Services and Markets Act 2000 (FSMA) for disapplying or modifying proposed rules on the use of resecuritisations.

1.4 The proposals in this CP would result in:

- a new Securitisation Part of the PRA Rulebook (Appendix 1);
- changes to SS10/18 (Appendix 2); and
- a new statement of policy (SoP) – Permissions for resecuritisations (Appendix 3).

1.5 The PRA's proposals relating to the replacement of the relevant provisions in the Securitisation Regulation, the Risk Retention Technical Standards, and the Disclosure Technical Standards would largely preserve current requirements when retained EU law is transferred to the PRA Rulebook. These requirements would advance the PRA's objectives, including by promoting the safety and soundness of PRA-authorised investors in securitisations.

1.6 The CP proposes the following targeted adjustments to these requirements:

- Clarification of the person scope of the requirements on manufacturers[1] and an adjustment to the person scope of SS10/18: These proposals would advance the safety

and soundness of PRA-authorised investors in securitisations by clarifying that all PRA-authorised manufacturers in securitisations who are established in the UK are subject to relevant requirements and by setting out supervisory expectations for all such manufacturers.[2]

- A more principles-based approach to due diligence obligations on PRA-authorised institutional investors in relation to disclosures by manufacturers: This could make these requirements more proportionate and facilitate international competitiveness.
- Clarification of provisions on delegation of due diligence: Clarifying that in certain circumstances only the managing party and not the delegating party would be subject to due diligence requirements could make them more proportionate and facilitate international competitiveness.
- Changes to risk retention requirements in non-performing exposures (NPE) securitisations: This would facilitate the use of NPE securitisations by PRA-authorised persons to reduce their credit risk, thus promoting their safety and soundness, and facilitating competitiveness and growth in the medium to long term.
- Clarification of timelines for manufacturers making available certain information: This could assist PRA-authorised institutional investors with managing their due diligence process more effectively.
- A new SoP – Permission for resecuritisations: This would increase transparency by indicating that the PRA would usually envisage using section 138BA of FSMA to grant permissions for resecuritisations only in circumstances broadly similar to those in which the PRA could currently grant permissions for resecuritisations under the Securitisation Regulation.
- Other smaller changes to risk retention requirements: Some of these changes are intended to make these requirements clearer, including by further specifying their content. Other changes would make these requirements more proportionate.

1.7 This CP also addresses the distinction between public and private securitisations and the associated transparency requirements to seek views and evidence from respondents. The PRA may consult on proposals in this area in a future CP.

1.8 The CP is relevant to all categories of PRA-authorised persons who are established in the UK, including CRR firms, Solvency II firms, non-CRR firms, and non-Solvency II firms. It is also relevant to qualifying parent undertakings, which for this purpose comprise financial holding companies and mixed financial holding companies, as well as credit institutions, investment firms, and financial institutions that are subsidiaries of these firms. It is not relevant to non-UK firms with branches in the UK.

1.9 The PRA has a statutory duty to consult when introducing new rules (FSMA s138J). When not making rules, the PRA has a public law duty to consult widely where it would be fair to do so.

1.10 In carrying out its policymaking functions, the PRA is required to comply with several legal obligations. Appendix 4 lists the statutory obligations applicable to the PRA's policy development process. The analysis in this CP explains how the proposals have had regard to the most significant matters, including an explanation of the ways in which having regard to these matters has affected the proposals.

## Background

1.11 HMT established a **review** to determine 'how the financial services regulatory framework should adapt to the UK's new position outside of the European Union (EU), and how to ensure the framework is fit for the future.' Sections 1 and 4 of the FSM Act 2023 provide for the repeal and restatement of financial services retained EU law in secondary legislation to give way to a 'comprehensive FSMA model of regulation'.[3] This means that the PRA and/or the FCA will generally take responsibility for setting most firm-facing requirements currently in this retained EU law in their rules, with targeted policy changes.

1.12 HMT has prioritised the Securitisation Regulation as one of the files for 'tranche 1' of the review process. This follows HMT's 2021 – **Review of the Securitisation Regulation: Report and call for evidence response** which concluded that the Securitisation Regulation remained an important element to the functioning regulation of securitisation in the UK. The review also identified specific areas where policy changes to the Securitisation Regulation could be considered. As part of the **Edinburgh Reforms** announcement in December 2022, HMT committed to working with the PRA and the FCA to bring forward, where appropriate, policy changes in these areas.

1.13 The Securitisation Regulation applies to securitisations where the securities are issued on or after 1 January 2019 (post-2019 securitisations). It is targeted at mitigating behavioural risks in securitisation markets. It also includes transitional provisions for securitisations where the securities were issued before 1 January 2019 (pre-2019 securitisations).[4]

1.14 Supervisory responsibility for the firm-facing provisions in the Securitisation Regulation (and the related Technical Standards) is currently shared primarily between the PRA and the FCA (with a more limited role for the Pensions Regulator):

- The PRA currently supervises compliance of PRA-authorised persons with requirements in Articles 5-9 of the Securitisation Regulation in relation to post-2019 securitisations. These include: (i) due diligence requirements for institutional investors in securitisations, and (ii) risk retention requirements, transparency requirements, credit granting standards, and restrictions on resecuritisations for manufacturers of securitisations. The PRA also

supervises compliance of PRA-authorised persons with requirements in Article 43(5) and (6) of the Securitisation Regulation in relation to pre-2019 securitisations.
- The FCA currently supervises UK firms other than PRA-authorised persons and other than occupational pension schemes in relation to Articles 5-9 and Article 43(5) and (6) of the Securitisation Regulation. The FCA also has sole supervisory responsibility for other firm-facing provisions of the Securitisation Regulation.

1.15 Consistent with the PRA's current scope of supervisory responsibilities, this CP focuses on requirements applicable to PRA-authorised persons in Articles 5-9 and Article 43(5) and (6) of the Securitisation Regulation as well as the related Risk Retention Technical Standards and Disclosure Technical Standards. Respondents may also want to refer to the forthcoming FCA CP on replacing relevant firm-facing provisions in the Securitisation Regulation and related Technical Standards in FCA rules, entitled 'Rules relating to Securitisation' (the FCA CP).[5] Some of these FCA rules relate to securitisations that are simple, transparent, and standardised (STS) and apply also to PRA-authorised persons. Respondents may also want to consider HMT's **draft Securitisation Regulations 2023** which will restate some provisions of the Securitisation Regulation in legislation while other provisions in the Securitisation Regulation will be repealed and replaced with PRA or FCA rules (or fall away). Together, this CP, the FCA CP, and HMT's **draft Securitisation Regulations 2023** give an overview of the proposed replacement of the Securitisation Regulation and related Technical Standards.

## Structure of the CP

1.16 The CP is structured as follows:

- **Chapter 2** – sets out proposals for replacing requirements on PRA-authorised persons in the Securitisation Regulation for which the PRA has supervisory responsibility. Chapter 2 also covers proposed changes to SS10/18 and the proposed SoP on the exercise of the PRA's power under section 138BA of FSMA.
- **Chapter 3** – covers proposals for replacing, with targeted policy adjustments, requirements on PRA-authorised persons in the Risk Retention Technical Standards.
- **Chapter 4** – focuses on the proposed replacement (without any policy adjustments) of requirements on PRA-authorised persons in the Disclosure Technical Standards.
- **Chapter 5** – discusses the distinction between public and private securitisations and the transparency requirements for these categories of securitisation, but without putting forward proposals at this point in time.
- **Chapter 6** – sets out a 'have regards' analysis for the proposals in Chapters 2–4.
- **Chapter 7** – sets out a cost benefit analysis (CBA) for the proposals in Chapters 2–4.

### Implementation

1.17 The proposed implementation date for the changes resulting from this CP is 2024 Q2, subject to the progress of the **draft Securitisation Regulations 2023**

### Responses and next steps

1.18 This consultation closes on Monday 30 October 2023. The PRA invites feedback on the proposals set out in this consultation. Please address any comments or enquiries to **CP15_23@bankofengland.co.uk**. Please indicate in your response if you believe any of the proposals in this consultation paper are likely to impact persons who share protected characteristics under the Equality Act 2010, and if so, please explain which groups and what the impact on such groups might be. The PRA may share responses to this CP with the FCA or HMT. This means HMT and/or the FCA may review the responses and may also contact you to clarify aspects of your response.

1.19 References related to the UK's membership of the EU in SS10/18 covered by this CP have been updated as part of these proposals to reflect the UK's withdrawal from the EU. Unless otherwise stated, any references to EU or EU-derived legislation refer to the version of that legislation which forms part of retained EU law.[6] This CP does not include updates to the SoP – **Interpretation of EU Guidelines and Recommendations: Bank of England and PRA approach after the UK's withdrawal from the EU**.

1.20 A number of PRA publications contain cross-references to the Securitisation Regulation or related Technical Standards that will need to be updated. Other than in relation to SS10/18, this CP does not include proposed amendments to such publications reflecting these updates. However, the PRA will make these updates in due course.

## 2. Replacing relevant provisions in the Securitisation Regulation with PRA rules

2.1 This chapter sets out the PRA's proposed new, but mainly re-stated from retained EU legislation, rules to replace requirements on PRA-authorised persons in relation to post-2019 securitisations that are currently in the Securitisation Regulation, specifically:

- Article 5 (Due-diligence requirements for institutional investors);
- Article 6 (Risk retention);
- Article 7 (Transparency requirements for originators,[7] sponsors[8] and securitisation special purpose entities (SSPEs)[9]);
- Article 8 (Ban on resecuritisation); and
- Article 9 (Criteria for credit-granting).

2.2 This chapter also covers the PRA's proposed new rules to replace requirements on PRA-authorised persons in relation to pre-2019 securitisations in Article 43(5) and (6) (Transitional provisions) of the Securitisation Regulation.

2.3 Further, this chapter describes proposed updates to SS10/18 and the proposed SoP on the exercise of the PRA's power under section 138BA of FSMA in relation to the proposed rules on the use of resecuritisations.

2.4 The chapter begins with an outline of the PRA's general approach to replacing the relevant requirements for post- and pre-2019 securitisations. The PRA then sets out the proposed policy adjustments to the requirements for post-2019 securitisations.

## General approach

2.5 The Securitisation Regulation aimed to strengthen the legislative framework for securitisations in response to the global financial crisis. The PRA's proposed approach to the replacement of relevant firm-facing provisions in the Securitisation Regulation with PRA rules would largely preserve current requirements, with a limited number of policy adjustments set out below.

2.6 As part of this approach, the PRA has transferred some of the wording currently contained in recital (11) and (14) of the Securitisation Regulation into rules. This is because the PRA considers that they are formulated like operating provisions and that market participants rely on them, so moving them into PRA rules improves clarity for firms. Recital (11) refers to 'the right of originators or sponsors to select assets to be transferred to the SSPE that ex ante have a higher-than-average credit-risk profile compared to the average credit-risk profile of comparable assets that remain on the balance sheet of the originator, as long as the higher credit-risk profile of the assets transferred to the SSPE is clearly communicated to the investors or potential investors.' Recital (14) states that 'to the extent that trade receivables are not originated in the form of a loan, credit-granting criteria need not be met with respect to trade receivables.'

### PRA objectives analysis

2.7 HMT undertook a **Call for Evidence** and review of the Securitisation Regulation in 2021, which the PRA assisted in producing. In paragraph 2.51 of its **Review of the Securitisation Regulation: Report and call for evidence response** HMT stated that 'considering responses, market trends, and the time that has passed since the Securitisation Regulation was introduced, HMT assesses that the Securitisation Regulation remains an important element to the functioning regulation of securitisation in the UK.' HMT's review supported the Securitisation Regulation and identified some areas of the Regulation that may benefit from targeted and appropriate refinement.

2.8 Consistent with this, the PRA considers that its proposed approach of largely preserving the relevant requirements in the Securitisation Regulation when replacing them with PRA rules would advance the PRA's general objective of advancing the safety and soundness of PRA-authorised persons. This is because the relevant requirements of the Securitisation Regulation mitigate behavioural risks in securitisation markets that can have prudential implications, including for PRA-authorised investors in securitisations. In particular, the proposed PRA rules include:

- due diligence requirements on institutional investors to ensure a proper assessment of the risks of investing in securitisations, which would inform their investment decisions and ongoing management of these risks;
- risk retention requirements on manufacturers of securitisations aimed at better aligning their incentives with those of investors to reduce the risk that information asymmetries between manufacturers and investors are exploited when manufacturers grant and select underlying exposures in securitisations;
- transparency requirements on manufacturers of securitisations to increase the information available to investors about the securitisations to support their due diligence;
- restrictions on resecuritisations to reduce the complexity of securitisations that are marketed to investors, which could otherwise reduce the level of transparency in the securitisation market and complicate investors' assessment of risk; and
- credit-granting standards to reduce information asymmetries between manufacturers of, and investors in, securitisations in relation to the quality of the exposures securitised.

2.9 The PRA also considers that replacing the relevant requirements in the Securitisation Regulation, when they are revoked, with PRA rules would avoid disruption to the securitisation market. This would in turn advance the safety and soundness of PRA-authorised firms.

2.10 The PRA's proposed rules also apply, among others, to PRA-authorised persons who are insurers. For this reason, the PRA also considered whether the proposed rules are compatible with, and most appropriate for advancing, both the general objective discussed above and its insurance objective of contributing to the securing of an appropriate degree of protection for those who are or may become policyholders. The PRA considers that the proposed rules address behavioural risks in securitisation markets that could have prudential impacts on PRA-authorised investors in securitisations, and that would include insurers. Further, the PRA considers that the proposed rules serve to increase confidence in securitisation markets, and that could benefit insurers either in their capacity as manufacturers or as investors in securitisations. This would indirectly contribute to securing an appropriate degree of protection for policyholders. The remainder of this CP does not separately address the insurance objective, although the discussion of the PRA's general objective will, for the reasons set out, be relevant also to the insurance objective.

2.11 The FSM Act 2023 introduces a new secondary competitiveness and growth objective for the PRA. This new secondary objective requires the PRA (in discharging its general functions in a way that advances its primary objectives and so far as reasonably possible) to act in a way that facilitates, subject to aligning with relevant international standards: (a) the international competitiveness of the economy of the UK (including, in particular, the financial services sector through the contribution of PRA-authorised persons); and (b) its growth in the medium to long term. While there is an ongoing cost to firms of complying with proposed PRA rules that preserve requirements in the Securitisation Regulation, there would be no new adjustment costs where the requirements are not changing. The proposed PRA rules also serve to increase investors' confidence in securitisation markets. The rules would remain very similar to those in the EU. On balance, the proposed rules are therefore likely to facilitate competitiveness and growth as described in the new objective.

2.12 The PRA also considered whether the proposed rules replacing the Securitisation Regulation would facilitate its secondary objective of effective competition in the markets for services provided by PRA-authorised persons in carrying on regulated activities. The proposed rules on manufacturers in the Securitisation Regulation apply to all PRA-authorised manufacturers, and the PRA does not consider that the proposed rules would have adverse effects on competition. The proposed rules on institutional investors in relation to due diligence apply only to PRA-authorised CRR firms and Solvency II firms. However, the PRA considers that this is unlikely to have a material adverse effect on competition as PRA-authorised non-CRR firms and non-Solvency II firms are less likely to invest in securitisations.

2.13 The transitional provisions for pre-2019 securitisations preserve (with some modifications) relevant requirements in sectoral legislation that pre-date the Securitisation Regulation. The PRA considers that these requirements for pre-2019 securitisations, while not consistent across sectoral legislation and less comprehensive, are similar in spirit to some of those included in the Securitisation Regulation for post-2019 securitisations, and also advance the PRA's objectives for the reasons set out above. The PRA understands that the transitional provisions for pre-2019 securitisations were introduced for reasons of legal certainty.

2.14 That said, the PRA identified areas where policy changes to requirements in the Securitisation Regulation would further advance the PRA's objectives. These are covered below and, in relation to the Risk Retention Technical Standards, in Chapter 3. The PRA is also aware that the distinction between private and public securitisations for purposes of the transparency requirements and the related disclosure requirements could usefully be reviewed in the future, as discussed in Chapter 5.

## Clarification of the person scope of requirements on manufacturers

2.15 The Securitisation Regulations 2018 currently uses wording that the PRA considers could cast doubt as to the application of Articles 6-9 of the Securitisation Regulation to PRA-authorised non-CRR firms and non-Solvency II firms that do not manufacture securitisations 'as a regular occupation or business activity'. The PRA proposes to clarify the scope of the proposed rules replacing Articles 6-9 so that it is clear that they capture one-off securitisations for PRA-authorised non-CRR firms and non-Solvency II firms.

2.16 Section 2 of SS10/18 sets out supervisory expectations for PRA-authorised CRR firms and Solvency II firms in relation to their arrangements, processes, and mechanisms for compliance with the Securitisation Regulation. These supervisory expectations currently do not apply to PRA-authorised non-CRR firms and non-Solvency II firms. The PRA proposes to extend the scope of these expectations to PRA-authorised non-CRR firms and non-Solvency II firms.

### PRA objectives analysis

2.17 The PRA has a general ambition to make its rules as clear as possible for firms to understand. Clarifying that the proposed rules replacing Articles 6-9 of the Securitisation Regulation apply also to one-off securitisations by PRA-authorised non-CRR firms and non-Solvency firms would advance the safety and soundness of PRA-authorised investors in securitisations. This is because even one-off securitisations (to the extent such firms might engage in them) could pose risks to PRA-authorised (and other) investors. PRA-authorised CRR firms and Solvency II firms are already clearly subject to Articles 6-9 even if they manufacture securitisations only on a one-off basis.

2.18 The proposal to extend the scope of section 2 of SS10/18 to PRA-authorised non-CRR firms and non-Solvency II firms has the potential to support compliance by these firms with requirements on manufacturers of securitisations (if relevant). This could contribute to the safety and soundness of PRA-authorised investors in securitisations.

2.19 The PRA discusses the costs of these proposals in Chapter 7 and does not consider that the proposals would have material adverse effects on: (a) the international competitiveness of the economy of the UK (including in particular the financial services sector through the contribution of PRA-authorised persons), and (b) the growth of the economy of the UK in the medium to long term. The PRA does not consider that the proposals would have material adverse effects on effective competition in the markets for services provided by PRA-authorised persons in carrying on regulated activities.

## Adjustments to due diligence requirements in relation to manufacturers' disclosures

2.20 Article 5(1)(e) of the Securitisation Regulation requires UK institutional investors to verify whether UK manufacturers have made available the information required by Article 7 in accordance with the frequency and modalities provided for in that Article. Article 5(1)(f) of the Securitisation Regulation requires UK institutional investors in securitisation positions to verify whether non-UK manufacturers have made available information which is 'substantially the same' (and with substantially the same frequency and modalities) as that which would have been made available by UK manufacturers under Article 7. HMT's **Review of the Securitisation Regulation: Report and call for evidence response** noted that the latter wording could helpfully be clarified further.

2.21 The PRA proposes a more principles-based and proportionate approach when replacing both Article 5(1)(e) on verifying disclosure by UK manufacturers and Article 5(1)(f) on verifying disclosure by non-UK manufacturers with PRA rules. The proposed rules would require UK institutional investors to verify that a manufacturer of a securitisation has made available sufficient information to enable them to assess the risks of holding the securitisation position. Also, the proposed rules would state that the relevant information includes at least certain types of information (including in relation to the underlying exposures and the structure of the securitisation) at certain times or frequencies, but without importing all the details currently in Article 7 and the associated Disclosure Technical Standards. The proposed rules would also expressly require UK institutional investors to verify that a manufacturer committed to make further information available on an ongoing basis, as appropriate.

### PRA objectives analysis

2.22 Articles 5(1)(e) and (f) are only one element of the due diligence requirements in Article 5 of the Securitisation Regulation, limited to verifying what information manufacturers provide. Article 5(3) of the Securitisation Regulation requires UK institutional investors to assess the risk involved prior to holding a securitisation position and the PRA proposes to retain that requirement in the draft PRA rules. Article 5(4) of the Securitisation Regulation requires UK institutional investors to undertake due diligence and adequately manage risks in the course of holding the securitisation position. The PRA does not propose to make changes to the content of Article 5(3) and Article 5(4) when replacing them with rules. The PRA considers that the combination of the proposed PRA rules to replace Article 5(1)(e) and (f), Article 5(3), and Article 5(4) will require sufficient due diligence to advance the safety and soundness of PRA-authorised institutional investors.

2.23 The PRA considers that its proposals on a more principles-based approach to replacing Article 5(1)(e) and (f) could, however, reduce the compliance cost of PRA-authorised institutional investors' due diligence in relation to all securitisations. This is because they no longer need to verify that all the information listed in Article 7 and the related Disclosure Technical Standards are provided (also refer to Chapter 5 on the review of these transparency requirements). The proposed approach could also address legal uncertainty over what due diligence is required under Article 5(1)(f) in relation to overseas securitisations (and hence legal fees). The PRA considers that the proposed express requirement on institutional investors to verify that a manufacturer committed to make further information available on an ongoing basis, as appropriate, on the other hand, is unlikely to be costly to discharge. Reducing the cost to PRA-authorised institutional investors of investing in securitisations, without lowering prudential standards, could facilitate: (a) the international competitiveness of the economy of the UK (including, in particular, the financial services sector through the contribution of PRA-authorised persons), and (b) the growth of the economy of the UK in the medium to long term by supporting prudentially sound but efficient securitisation markets.

2.24 The proposed approach to replacing Article 5(1)(e) and (f) with PRA rules would be consistent across UK and non-UK manufacturers. The PRA does not consider that the proposals would have adverse effects on effective competition in the markets for services provided by PRA-authorised persons in carrying on regulated activities.

## Clarification of provisions on delegation of due diligence to a managing party

2.25 Article 5(5) of the Securitisation Regulation provides that where an institutional investor (the delegating party) has given another institutional investor (the managing party) authority to make investment management decisions that might expose it to a securitisation, the delegating party may instruct that managing party to fulfil its due diligence obligations in respect of any exposure to a securitisation arising from those decisions. Article 5(5) states that the competent authority may then take enforcement action against the managing party for failure to fulfil such due diligence obligations of the delegating party and not against the delegating party. The wording of Article 5(5) may have created some ambiguity as to whether enforcement action may also be taken against the delegating party in these circumstances.

2.26 The PRA proposes to clarify in the proposed rules replacing Article 5(5) that if a delegating party instructs a managing party to fulfil any of its due diligence obligations in these circumstances, the delegating party would not be responsible for failure to comply with the relevant obligations. This is provided that the managing party is subject to the equivalent due diligence obligations under the proposed PRA rules or FCA rules. This is a proportionate approach. The **draft Securitisation Regulations 2023** do not provide that, where trustees and managers of an occupational pension scheme act as the managing party, that managing party will be subject to any due diligence obligation that a delegating party instructs it to fulfil.

Therefore, under the proposed PRA rules, a delegating party would still be responsible for failure to comply with the relevant obligations in these circumstances (if they arise in practice).

### PRA objectives analysis

2.27 The PRA considers that the proposed clarification would be consistent with continuing to advance the safety and soundness of PRA-authorised institutional investors in securitisations, for the following reasons:

- The managing party would be liable under PRA or FCA rules for any non-compliance with the due diligence obligations when instructed to fulfil these obligations on behalf of the delegating party under the rules replacing Article 5(5).
- The managing party would itself have to be an 'institutional investor' subject to FCA or PRA rules replacing Article 5.
- Article 5(5) and rules replacing it apply only in certain circumstances – specifically, Article 5(5) requires the delegating party to give the managing party 'authority to make investment management decisions' as well as to 'instruct that managing party to fulfil' the due diligence requirements in relation to relevant investment decisions.
- The PRA considers that PRA-authorised delegating parties will be subject to other relevant regulatory requirements, including the PRA's Fundamental Rules.

2.28 A delegating party is not generally close to the investment decisions made by the managing party and the related due diligence. The proposal to clarify that the delegating party would not be liable for non-compliance with any due diligence obligations it has instructed the managing party to fulfil could reduce compliance risk and costs. This reduction in compliance risk and costs would be of value to a delegating party when gaining exposures to securitisations indirectly via managing parties. In principle, this could facilitate a) the international competitiveness of the economy of the UK (including, in particular, the financial services sector through the contribution of PRA-authorised persons), and b) the growth of the economy of the UK in the medium to long term by reducing the costs involved in participating in the securitisation market, without reducing resilience.

2.29 The PRA does not consider that the proposed clarification would have material adverse effects on effective competition in the markets for services provided by PRA-authorised persons in carrying on regulated activities.

## Non-performing exposures securitisations and the non-refundable purchase price discount

2.30 The risk retention requirements in Article 6 of the Securitisation Regulation currently refer to the nominal value of securitised exposures. However, the PRA considers that non-performing exposures (NPE) are usually securitised at a substantial discount to their nominal

value, and their net value better reflects the market assessment of the risk of loss to investors. The PRA proposes to allow this reduction in value, the non-refundable purchase price discount (NRPPD), for NPE to be reflected, where appropriate, in the risk retention requirements for NPE securitisations. This could make risk retention requirements for NPE securitisations more proportionate.

2.31 The PRA does not at this point propose any other policy change relating to NPE securitisations, but may consider this in the future.

### PRA objectives analysis

2.32 NPE securitisations would assist with reducing the credit risk of PRA-authorised persons. The PRA has already implemented changes to capital requirements for NPE securitisations in 2021, as detailed in PS24/21 – **Implementation of Basel standards: Non-performing loan securitisations**. The proposed adjustment to risk retention requirements for NPE securitisations could further contribute to facilitating NPE securitisations and thereby advance the safety and soundness of PRA-authorised persons.

2.33 The proposal would remove a disincentive for NPE securitisations relative to other securitisations. Depending on the evolution of the market for NPE securitisations, this could facilitate effective competition.

2.34 Making it easier for PRA-authorised persons to securitise NPE could also facilitate a) the international competitiveness of the economy of the UK (including, in particular, the financial services sector through the contribution of PRA-authorised persons), and b) the growth of the economy of the UK in the medium to long term by growing the market for securitisations.

## Clarification of timelines for manufacturers making available certain information

2.35 Article 7 of the Securitisation Regulation currently requires manufacturers to make the information specified in Article 7(1)(b) to (d) available 'before pricing'. However, the information specified in Article 7(1)(b) to (d) includes (i) underlying documentation that is essential for the understanding of the transaction, (ii) where no approved prospectus is required under UK law[10] a transaction summary or overview of the main features of the securitisation, and (iii) in relation to simple, transparent and standardised (STS) securitisations, the STS notification. This information will generally be available only after 'pricing' in the literal sense of the word as it includes information on pricing.

2.36 Further, Article 22(5) of the Securitisation Regulation requires that, in relation to an STS securitisation, the information required by Article 7(1)(b) to (d), must be made available before pricing at least in draft or initial form and that the final documentation must be made

available to investors at the latest 15 days after closing of the transaction. This raises a question about the consistency of the specification of timelines in Article 22(5) with that in Article 7.

2.37 The PRA proposes to replicate in the proposed rules that would replace Article 7, the clearer wording used in Article 22(5) on the timelines for providing the information in Article 7(1)(b) to (d).

### PRA objectives analysis

2.38 Greater clarity about when the information in Article 7(1)(b) to (d) must be made available in draft and in final form by manufacturers could assist PRA-authorised institutional investors with engaging with manufacturers and managing their due diligence process more effectively. In principle, this could advance the safety and soundness of PRA-authorised institutional investors.

2.39 The PRA considers that providing greater clarity on this point to manufacturers and investors could also facilitate a) the international competitiveness of the economy of the UK (including, in particular, the financial services sector through the contribution of PRA-authorised persons), and b) the growth of the economy of the UK in the medium to long term. The PRA does not consider that the proposal would have adverse effects on effective competition in the markets for services provided by PRA-authorised persons in carrying on regulated activities.

## Restrictions on resecuritisations, section 138BA of FSMA, and the proposed statement of policy

2.40 Article 8(2) of the Securitisation Regulation currently gives the PRA a power to grant permission to PRA-authorised manufacturers to manufacture resecuritisations where it deems the use of a resecuritisation to be for a legitimate purpose. Legitimate purposes currently include:

- the facilitation of the winding-up of a credit institution, an investment firm, or a financial institution;
- ensuring the viability as a going concern of a credit institution, an investment firm, or a financial institution in order to avoid its winding-up; or
- where the underlying exposures are non-performing, the preservation of the interests of investors.

2.41 The **draft Securitisation Regulations 2023** do not preserve the PRA's power under Article 8(2) of the Securitisation Regulation to grant such permissions. However, the PRA understands that under section 34 of the FSM Act 2023, HMT intends to switch on (at a time

to be confirmed) a new power for the PRA under section 138BA of FSMA to disapply or modify its rules.

2.42 Appendix 3 of this CP contains a proposed SoP on the PRA's approach to this new power in relation to the proposed rules on the use of resecuritisations in Appendix 1 of this CP. This would provide transparency for firms as to the PRA's approach. The proposed SoP indicates that the PRA would usually envisage using the power in section 138BA of FSMA to permit a resecuritisation only in circumstances broadly similar to those in which the PRA could currently grant permission for a resecuritisation under Article 8(2) of the Securitisation Regulation. The proposed SoP also indicates that the PRA would expect to consult the Bank of England, as resolution authority, before granting such a permission in relation to resecuritisations.

2.43 The PRA may also consider further aspects relating to the use of section 138BA of FSMA in future. This may affect some of the operational aspects outlined in the draft SoP.

### PRA objectives analysis

2.44 Please refer to the section on 'General approach'. The use of section 138BA of FSMA would allow the PRA to permit resecuritisations in certain circumstances, where appropriate.

# 3. Replacing relevant provisions in the Risk Retention Technical Standards with PRA rules

3.1 Article 6 of the Securitisation Regulation requires that the originator(s),[11] sponsor(s),[12] or original lender(s)[13] retain a material net economic interest in a securitisation (in which case, they act as retainer). The Risk Retention Technical Standards currently provide further details on the risk retention requirements and their application.

3.2 This chapter sets out the PRA's proposals for rules to replace relevant requirements on PRA-authorised persons in the Risk Retention Technical Standards, with the following changes to current requirements:

- allowing a change of the risk retainer in the event of the retainer's insolvency;
- adjusting the existing risk retention methods to take into account the net value of NPEs for NPE securitisations, where appropriate;
- introduction of criteria to assess whether an entity retaining the risk in a securitisation has not been established and is not operating for the 'sole purpose' of securitising exposures;
- specification of how the risk retention requirements apply in resecuritisations;

- permitting, beyond credit institutions, all CRR and Solvency II firms to retain risk in synthetic/contingent form without fully collateralising it in cash and holding it on a segregated basis as clients' money; and
- specification of how the comparability between the securitised assets remaining on an originator's balance sheet and the ones transferred to a securitisation special purpose entity (SSPE) should be assessed.

## General approach

3.3 The PRA proposes to largely retain in its proposed rules relevant provisions of the Risk Retention Technical Standards, with a limited number of policy adjustments set out below.

### PRA objectives analysis

3.4 The risk retention requirements on manufacturers aim to better align their incentives with those of investors to reduce the risk that information asymmetries between manufacturers and investors are exploited when manufacturers grant and select underlying exposures for securitisations. The Risk Retention Technical Standards provide essential details on the risk retention requirements and how they apply. Therefore, the PRA considers that the proposal to largely retain the relevant provisions would continue to advance the safety and soundness of PRA-authorised investors.

3.5 While the relevant provisions in the Risk Retention Technical Standards impose ongoing costs on manufacturers, they could contribute to confidence in securitisation markets. Retaining largely the same requirements in the proposed PRA rules would also limit one-off transitional costs. Therefore, the PRA considers that the proposal to largely retain these provisions could facilitate a) the international competitiveness of the economy of the UK (including, in particular, the financial services sector through the contribution of PRA-authorised persons), and b) the growth of the economy of the UK in the medium to long term by ensuring a safe and sound securitisation market exists.

3.6 The Risk Retention Technical Standards apply to all manufacturers of securitisations. Therefore, the PRA does not consider that the proposal to largely retain the relevant provisions in the Risk Retention Technical Standards would have adverse effects on effective competition in the markets for services provided by PRA-authorised persons in carrying on regulated activities.

3.7 However, the current Risk Retention Technical Standards date back to 2014. They were developed originally under the CRR. Chapters I, II, and III and Article 22 of the Risk Retention Technical Standards apply (pursuant to Article 43(7) of the Securitisation Regulation) on a transitional basis for the purposes of Article 6 of the Securitisation Regulation until new Risk Retention Technical Standards are made. This means that the Risk Retention Technical Standards have not been updated while the regulatory framework for securitisations has

gone through significant changes, including the implementation of the Securitisation Regulation in 2019. Therefore, in the rules replacing the Risk Retention Technical Standards, the PRA proposes to make some targeted updates and adjustments, as discussed below.

## Change of the risk retainer

3.8 Article 6 of the Securitisation Regulation generally requires risk retention on an ongoing basis. This is subject to a qualification in Article 14 of the Risk Retention Technical Standards in relation to risk retention on a consolidated basis. In summary, this states that an institution satisfying the retention requirements in this way must, in the case the retainer is no longer included in the scope of supervision on a consolidated basis, ensure that one or more of the remaining entities included in the scope of supervision on a consolidated basis assumes exposure to the securitisation so as to ensure ongoing fulfilment of the requirement.

3.9 The PRA proposes to also permit a change of the retainer (and a transfer of the retention) in the event of the retainer's insolvency. The PRA considers that a retainer needs an exit option when it becomes practically impossible to continue honouring the retention obligation because of insolvency.

### PRA objectives analysis

3.10 The proposal to allow the transfer of the retention in the event of insolvency could avoid unnecessary market disruption (eg forced selling by investors with impacts on the proceeds of the securitisation and possible wider market impacts). This would advance the safety and soundness of PRA-authorised manufacturers and investors in securitisations.

3.11 The PRA does not consider that the proposal would have adverse effects on effective competition in the markets for services provided by PRA-authorised persons in carrying on regulated activities. Nor does the PRA consider that it would have adverse effects on a) the international competitiveness of the economy of the UK (including, in particular, the financial services sector through the contribution of PRA-authorised persons), and b) the growth of the economy of the UK in the medium to long term.

## Risk retention for NPE securitisations

3.12 As set out in Chapter 2 of this CP, the PRA proposes that the rules replacing the Securitisation Regulation would allow PRA-authorised manufacturers to calculate the risk retention using the net value of NPEs for NPE securitisations where appropriate. To be effective, this change would also need to be reflected in the proposed PRA rules replacing related provisions of the Risk Retention Technical Standards. In particular, the PRA proposes to specify that the risk retention methods currently set out in Articles 5(a), 6, 7, 8 and 9 of the Risk Retention Technical Standards would have to be applied for NPE securitisations with reference to the net value of NPEs.

### PRA objectives analysis

3.13 Please refer to the PRA objectives analysis in the ‘Non-performing exposures securitisations and the non-refundable purchase price discount’ section of Chapter 2.

## The ‘sole purpose test’

3.14 Article 6(1) of the Securitisation Regulation sets out the ‘sole purpose test’, which states that the entity retaining the risk must not be established or operate for the sole purpose of securitising exposures. The PRA considers that this is to prevent eg ‘shell’ companies from acting as risk retainer.

3.15 The PRA proposes that, when considering if an entity is established for the sole purpose of securitising exposures, the following would have to be taken into account:

- whether the entity has a business strategy and payment capacity consistent with a broader business enterprise; and
- whether the members of the management body have the necessary experience to enable the entity to pursue the established business strategy and the entity has adequate corporate governance arrangements.

3.16 The PRA also continues monitoring market practices to see whether reviewing the proposed specification of the ‘sole purpose test’ would be appropriate.

### PRA objectives analysis

3.17 The PRA considers that the proposal to specify the ‘sole purpose test’, which is not addressed in the current Risk Retention Technical Standards, could promote a better understanding of the substance of the ‘sole purpose test’. This could advance the safety and soundness of PRA-authorised institutional investors.

3.18 To the extent the proposed test specification contributes to more consistent market practice and supervision, it could also facilitate competition among manufacturers.

3.19 The PRA expects the proposed test specification to be broadly in line with current market expectations, and not to have material adverse effects on a) the international competitiveness of the economy of the UK (including, in particular, the financial services sector through the contribution of PRA-authorised persons), and b) the growth of the economy of the UK in the medium to long term.

## Risk retention for resecuritisations

3.20 Article 8 of the Securitisation Regulation prohibits resecuritisations, unless the competent authority grants permission in narrowly specified circumstances. This is subject to transitional provisions for pre-2019 resecuritisations. Also, a fully supported asset-backed

commercial paper (ABCP) programme[14] is not considered to be a resecuritisation for these purposes, if 'none of the ABCP transactions within that programme is a resecuritisation and ... the credit enhancement does not establish a second layer of tranching at the programme level'.[15]

3.21 When transferring the Risk Retention Technical Standards in the PRA Rulebook, the PRA proposes to clarify that, in the resecuritisations that may be permitted, a retainer would generally have to retain the material net economic interest in relation to each of the transaction levels. This would mean that, in any resecuritisations that may be permitted, the retention of risk would generally be at the levels of both the underlying securitisation and the resecuritisation.

3.22 However, the PRA proposes that:

- where the originator acts as the retainer in the underlying securitisation, securitises only exposures or positions retained in excess of the minimum net economic interest in the underlying securitisation and there is no maturity mismatch between the underlying securitisation positions or exposures and the resecuritisation, the retention for the underlying securitisation would be sufficient;
- fully supported ABCP programmes of the kind that are not considered to be resecuritisations for the purposes of Article 8 would also not be treated as resecuritisations for risk retention purposes; and
- the retranching of an issued tranche into contiguous tranches by the securitisation's originator would not amount to a resecuritisation for risk retention purposes.

## PRA objectives analysis

3.23 The proposed clarification that, in any resecuritisations that may be permitted, the retention of risk must be at the levels of both the underlying securitisation and the re-securitisation is consistent with the purpose of risk retention requirements. This is to align manufacturers' incentives – at both the securitisation and the resecuritisation levels with those of investors. That would reduce the risk that information asymmetries between manufacturers and investors are exploited when manufacturers grant and select underlying exposures for securitisations. In principle, this clarification of risk retention requirements in resecuritisations should support compliance and the safety and soundness of PRA-authorised investors in re-securitisations.

3.24 However, the PRA considers that it is proportionate to consider retention at the securitisation level to be sufficient in the circumstances described in paragraph 3.22 above. In these circumstances, the PRA does not consider that a novel incentive problem arises at the resecuritisation level that the risk retention requirement at the level of the underlying securitisation does not already address.

3.25 The PRA expects the proposals to be broadly in line with market expectations. Therefore, the PRA does not consider that the proposals would have material adverse effects on a) the international competitiveness of the economy of the UK (including, in particular, the financial services sector through the contribution of PRA-authorised persons), and b) the growth of the economy of the UK in the medium to long term. As the proposed rules apply equally to all manufacturers, the PRA does not consider them to have an adverse effect on competition.

## Exemption from cash collateralisation requirement for synthetic/contingent retention

3.26 The current Risk Retention Technical Standards generally require that when retainers fulfil risk retention requirements through a synthetic or contingent form, the retained interest is fully collateralised in cash and segregated as if it were client money. A contingent form of retention means retention through the use of guarantees, letters of credit, and other similar forms of credit support ensuring an immediate enforcement of the retention. A synthetic form of retention means retention through the use of derivative instruments.

3.27 Only credit institutions are currently exempted from this obligation. The PRA proposes to exempt all PRA-authorised CRR and Solvency II firms.

### PRA objectives analysis

3.28 Retention in synthetic or contingent form may make it more difficult for some manufacturers to ensure compliance with risk retention requirements on an ongoing basis. The requirement to cash collateralise the retention held in this form is intended to address the additional risks of non-compliance in these circumstances and, thereby, advance the safety and soundness of PRA-authorised investors.

3.29 However, the PRA considers that CRR firms and Solvency II firms, like credit institutions, are more likely to be able to ensure compliance with risk retention requirements also when retaining in synthetic or contingent form. The PRA considers it difficult to justify continuing to limit the exemption from the cash collateralisation requirement to credit institutions. As noted in Chapter 6, the PRA therefore considers that extending the exemption from the cash collateralisation requirement to all CRR and Solvency II firms would be proportionate.

3.30 The PRA does not consider that extending the exemption from the cash collateralisation to CRR and Solvency II firms would have adverse effects on effective competition in the markets for services provided by PRA-authorised persons in carrying on regulated activities. Nor does the PRA consider that it would have adverse effects on a) the international

competitiveness of the economy of the UK (including, in particular, the financial services sector through the contribution of PRA-authorised persons), and b) the growth of the economy of the UK in the medium to long term.

## Comparability of assets held on the balance sheet of the originator with assets transferred to the securitisation special purpose entity (SSPE)

3.31 Article 6(2) of the Securitisation Regulation provides that originators must not select assets to transfer to the SSPE in order to render the losses of these assets to the SSPE, measured over the life of the transaction[16] higher than the losses over the same period on comparable assets held on the balance sheet of the originator. This provision aims to restrict 'cherry picking' of the weakest assets for inclusion in securitisations by originators and better align their interests with those of investors.

3.32 Currently, the Risk Retention Technical Standards do not address what 'comparable assets' means for this purpose. The PRA proposes to:

- specify that the assets held on the balance sheet of the originator that meet the eligibility criteria according to the documentation of the securitisation are comparable to the assets to be transferred to the SSPE where, at the time of the selection of the assets, both of the following conditions are met: (a) the expected performance of both the assets to be further held on the balance sheet and the assets to be transferred is determined by similar relevant factors; (b) as a result of the similarity referred to in point (a) and on the basis of indications such as past performance or applicable models, it can be reasonably expected that the performance of the assets to be further held on the balance sheet would not be significantly better over the relevant time than the performance of the assets to be transferred; but
- deem Article 6(2) as having been complied with also where, after the securitisation, no 'comparable assets' are left on the originator's balance sheet and this is clearly communicated to investors.

### PRA objectives analysis

3.33 The cherry-picking restrictions of article 6(2) of the Securitisation Regulation serve to protect investors against problematic selection by manufacturers of lower quality assets for inclusion in securitisations. The proposed specifications would clarify, and support compliance with, these cherry-picking restrictions. This would advance the safety and soundness of PRA-authorised investors in securitisations.

3.34 To the extent the proposed specifications would promote more consistent market practice, they might also facilitate competition between originators of securitisations.

3.35 The PRA expects the proposed specifications to be broadly in line with market practice and not to have material adverse effects on a) the international competitiveness of the economy of the UK (including, in particular, the financial services sector through the contribution of PRA-authorised persons), and b) the growth of the economy of the UK in the medium to long term.

### Other proposed minor adjustments to risk retention requirements

3.36 The PRA proposes to make some other more minor changes to relevant provisions in the Risk Retention Technical standards when replacing them with PRA rules. This is to make the relevant provisions clearer, or to link them to the risk retention requirements in rules replacing the Securitisation Regulation rather than to CRR provisions preceding the Securitisation Regulation.

3.37 To give an example of these more minor proposed changes, the Risk Retention Technical Standards already require disclosure of certain information about the risk retention. The PRA proposes to specify that this information needs to be included in 'the final offering document, prospectus, transaction summary or overview of the main features of the securitisation'. This also helps to clarify the relationship of this disclosure with other disclosures required under Article 7 of the Securitisation Regulation.

3.38 These proposed minor changes do not have an adverse effect on the PRA's objectives, and it is desirable for the rules to be clearly drafted.

## 4. Replacing relevant provisions in the Disclosure Technical Standards with PRA rules

4.1 The Disclosure Technical Standards provide details of the content and the format of some of the information that manufacturers have to provide in order to comply with certain transparency requirements in Article 7 of the Securitisation Regulation. They include detailed disclosure templates.

4.2 This chapter sets out the PRA's proposals for rules to replace requirements on PRA-authorised persons currently contained in the Disclosure Technical Standards made under Article 7 of the Securitisation Regulation.

4.3 The PRA's proposed rules would preserve the substance of the current requirements. The PRA will, however, work closely with the FCA to review these requirements and may consult on proposals in this area in a future CP.

4.4 HMT's **draft Securitisation Regulations 2023** contains transitional provisions to maintain the effect of the PRA's and FCA's Joint Direction **Reporting of private securitisations** in relation to the manner in which manufacturers of a private securitisation must make the information under Article 7(1)(a) to (g) of the EU Securitisation Regulation 2017 available to the FCA or the PRA, as the case may be. Provided that these transitional provisions are included in the final Securitisation Regulations, the Direction will continue to have effect after the repeal and restatement of the Securitisation Regulation. Therefore, the proposed rules do not replace this direction.

### PRA objectives analysis

4.5 The PRA considers that the proposal to preserve the requirements in the Disclosure Technical Standards by replacing them in PRA rules would advance the safety and soundness of PRA-authorised investors in securitisations. These requirements provide further details of some of the transparency requirements on manufacturers of securitisations currently contained in Article 7 of the Securitisation Regulation. The requirements in the Disclosure Technical Standards also ensure standardisation of the content and format of information that is provided by manufacturers to investors. This supports investors' assessment of the risks associated with holding positions in the securitisations.

4.6 The PRA considers that the proposed PRA rules replacing the requirements in the Disclosure Technical Standards could usefully be reviewed. The PRA is not proposing any changes at this point, but outlines progress on the review of transparency requirements (which include requirements in the Disclosure Technical Standards) in Chapter 5.

# 5. Review of transparency requirements

5.1 HMT's **Review of the Securitisation Regulation: Report and call for evidence response** concluded that the transparency requirements in the Securitisation Regulation could be improved. Together with the FCA, the PRA is currently reviewing these requirements. This CP does not contain proposals on which the PRA is consulting, but this chapter gives an overview of the issues that will be considered as part of this review and invites feedback now in order to inform future policy development. The PRA may consult on proposals in this area in a future CP.

## Distinction between 'public securitisations' and 'private securitisations'

5.2 The Securitisation Regulation distinguishes between 'public securitisations' (for which an approved prospectus is required under UK law) and 'private securitisations' (for which an approved prospectus is not required under UK law).[17]

5.3 Both public and private securitisations are subject to extensive disclosure requirements. These go further for public securitisations than for private securitisations. For example, only information in respect of public securitisations needs to be made available via a securitisation repository. There are also additional disclosure templates to be completed for public securitisations.

5.4 This current divide between public securitisations and private securitisations solely depends on whether an approved prospectus is required under UK law. The distinction results in different treatments for securitisations which are admitted to a UK regulated market on the one hand, and securitisations which are admitted to trading or traded on a UK trading venue that is not a UK regulated market or a non-UK trading venue.

5.5 Together with the FCA, the PRA is therefore considering how this distinction might be redrawn to support the development of more risk-sensitive disclosure requirements.

5.6 The FCA outlines possible approaches for revising the distinction between 'public'and 'private' securitisations in a discussion chapter (Chapter 7) of the forthcoming FCA CP entitled 'Rules relating to Securitisation'. The PRA would also welcome receiving any comments from PRA-authorised persons on Chapter 7 of the FCA's CP.

### Disclosure templates

5.7 Together with the FCA, the PRA is considering whether the disclosure templates for 'private' securitisations could be made more proportionate while still supporting the provision of sufficient information by manufacturers of securitisations to investors. There may also be a question whether more limited adjustments to disclosure requirements for 'public' securitisations might be appropriate.

5.8 The FCA outlines possible approaches for revising the disclosure templates for 'public' and 'private' securitisations in Chapter 7 of the FCA CP. As mentioned above, the PRA would welcome receiving any comments from PRA-authorised persons on Chapter 7 of the FCA's CP.

## 6. 'Have regards' analysis and other considerations

6.1 This Chapter sets out the PRA's 'have regards' analysis for the proposals in this CP to replace requirements in the Securitisation Regulation, the Risk Retention Technical Standards, and the Disclosure Technical Standards as a whole. This Chapter also discusses the impact of the proposals on mutuals and on equality and diversity.

### 'Have regards'

6.2 In developing the proposals in this CP, the PRA has had regard to:

- the regulatory principles in section 3B of FSMA (including as amended by the Financial Services and Markets Act 2023);
- the coherence of the overall framework for the regulation of securitisation, a new 'have regard' expected to be specified for the purposes of section 138EA of FSMA (see regulation 8 of the **draft Securitisation Regulations 2023** );
- the aspects of the Government's economic policy set out in the HMT recommendation letter sent December 2022; and
- principles in the Legislative and Regulatory Reform Act.

6.3 The following factors, to which the PRA is required to have regard, were significant in the PRA's analysis of these proposals:

**1. The need to use the resources of each regulator in the most efficient and economic way (FSMA regulatory principles)**: The PRA's general approach to replacing relevant firm-facing provisions in the Securitisation Regulation, the Risk Retention Technical Standards, and the Disclosure Technical standards that apply to PRA-authorised persons with PRA rules aims to largely preserve current requirements. PRA supervisors will need to familiarise themselves with the proposed changes, but the PRA does not consider the proposed changes would have a significant impact on supervisory resource. Largely maintaining the existing requirements will minimise the new areas that supervisors need to become familiar with. The efficient and economic use of resources of each regulator has been a consideration when determining not to make additional policy adjustments at this point. However, please refer to the discussion of a review of transparency requirements in Chapter 5, which will support the development of additional policy proposals. Once requirements have been transferred into the PRA Rulebook, the PRA considers it would be easier to make further policy adjustments where appropriate.

**2. The principle that a burden or restriction which is imposed on a person should be proportionate to the benefits which are expected to result from the imposition of that burden (FSMA regulatory principles)**: HMT's **Review of the Securitisation Regulation: Report and call for evidence response** concluded that the Securitisation Regulation remained an important element to the functioning regulation of securitisation in the UK. However, the PRA proposes to make targeted adjustments to relevant requirements in the Securitisation Regulation and the Risk Retention Technical Standards when replacing them with PRA rules which it considers would make them clearer, including by further specifying them, more risk sensitive and/or more proportionate. In particular:

- The proposed clarification to the person scope of requirements on manufacturers or the proposed broadening of the scope of the PRA's expectations in SS10/18 would be unlikely to have material impacts on firms. This is because PRA-authorised non-CRR firms and non-Solvency II firms are unlikely to manufacture securitisations.

- The PRA considers its proposed changes to due diligence requirements relating to information made available by manufacturers would reduce compliance costs and legal uncertainty for institutional investors.
- The proposed clarification around delegation of due diligence in certain circumstances is likely to be aligned with market participants' current interpretation of the Securitisation Regulation. However, it would reduce legal uncertainty for delegating parties.
- The proposed recognition of the NRPPD in relation to NPE securitisations would make risk retention requirements for NPE securitisations more proportionate.
- The proposed clarification of the timelines in which manufacturers have to make available certain information would increase clarity without adding significantly to burdens on manufacturers.
- The PRA considers it unlikely that the proposed SoP on the exercise of its power under section 138BA of FSMA would result in material changes for firms.
- The proposal to allow a change in retainer in the event of the insolvency of the retainer make the requirement for risk retention on an ongoing basis more proportionate.
- The proposed extension of the exemption from the cash collateralisation requirement for synthetic or contingent retention to all PRA-authorised CRR and Solvency II firms would reduce costs for the benefitting firms.
- The proposed specification of the 'sole purpose test', restrictions on asset selection, and risk retention in resecuritisations increase clarity and support compliance with relevant requirements without imposing undue additional burdens on firms.

The PRA considers that the transitional provisions for pre-2019 securitisations are proportionate as a transition to the requirements in the Securitisation Regulation (and related Technical Standards) would have limited benefits and could be disruptive.

**3. The desirability of sustainable growth in the economy of the UK in the medium or long term (FSMA regulatory principles) and supporting the government's objective of medium to long-term economic growth in the interests of consumers and businesses (HMT recommendation letter):** The PRA considers the current requirements of the Securitisation Regulation and the related Risk Retention Technical Standards and Disclosure Technical Standards mitigate behavioural risk in securitisation markets and thereby contribute to confidence in these markets. As set out above, the PRA proposes to largely retain in its rules relevant requirements on PRA-authorised persons in the Securitisation Regulation, the Risk Retention Technical Standards, and the Disclosure Technical Standards. However, the PRA also proposes to make targeted adjustments to make some of these requirements clearer, more risk sensitive, and/or more proportionate. These changes should support the development of the securitisation market. For example, the proposed recognition of NPE securitisations may facilitate NPE securitisations and the proposed changes to due diligence

requirements could facilitate investment by institutional investors in securitisations. This could contribute to sustainable growth. As discussed in Chapter 5, the PRA is also planning to review transparency requirements.

**4. The responsibilities of the senior management of persons subject to requirements imposed by or under FSMA, including those affecting consumers, in relation to compliance with those requirements (FSMA regulatory principles)**: Section 2 of SS10/18 sets out the PRA's expectations regarding senior management oversight of securitisation issuances and compliance with requirements of the Securitisation Regulation. The PRA proposes to broaden the scope of section 2 of SS10/18 to capture not only CRR and Solvency II firms, but also non-CRR and non-Solvency II firms. Other than that, the PRA does not propose to impose additional requirements on senior management, although senior management will need to familiarise itself with the targeted adjustments to requirements on PRA-authorised persons that are proposed in this CP.

**5. The desirability where appropriate of each regulator exercising its functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons subject to requirements imposed by or under FSMA (FSMA regulatory principles)**: The Securitisation Regulation (as further specified in Technical Standards) is a product regulation that aims to mitigate behavioural risks in the securitisation market, and as such applies to a wide range of manufacturers of securitisations, including PRA-authorised CRR firms, non-CRR firms, Solvency II firms, and non-Solvency II firms, among others. The PRA proposes to clarify that the requirements on manufacturers capture non-CRR firms and non-Solvency II firms also when they manufacture securitisations only on a one-off basis, due to the risk this could pose to investors. The PRA also proposes to broaden the scope of SS10/18 section 2 to capture not only PRA-authorised CRR and Solvency II firms, but also non-CRR and non-Solvency II firms. The PRA does not propose to extend the exemption from cash collateralisation requirements for retention in synthetic or contingent form to PRA-authorised non-CRR firms and non-Solvency II firms for now for the reasons set out in Chapter 3 and as the PRA considers they are less likely to manufacture securitisations and less likely to retain risk in synthetic or contingent form.

**6. The desirability in appropriate cases of each regulator publishing information relating to persons on whom requirements are imposed by or under FSMA, or requiring such persons to publish information, as a means of contributing to the advancement by each regulator of its functions (FSMA regulatory principles)**: The PRA's proposed rules would preserve transparency requirements in the Securitisation Regulation and (with minor adjustments) the Risk Retention Technical Standards that currently apply to PRA-authorised persons. The proposals include changes to SS10/18, particularly to set supervisory expectations also in relation to firms other than CRR and

Solvency II firms. They also include an SoP – Permissions for resecuritisations, indicating how the PRA expects to use a new power under section 138BA of FSMA to grant permissions for resecuritisations.

**7. The principle that the regulators should exercise their functions as transparently as possible (FSMA regulatory principles)**: The proposals in this CP are subject to a three-month public consultation.

**8. The coherence of the overall framework for the regulation of securitisation (new 'have regard' expected to be specified for the purposes of section 138EA of FSMA)**: The PRA and the FCA have coordinated their approach to the replacement of relevant firm-facing provisions in the Securitisation Regulation, the Risk retention Technical Standards, and the Disclosure Technical Standards and the development of policy proposals. The PRA proposals in this CP and the FCA proposals in the FCA CP rules are intended to form part of a coherent framework for regulating securitisation in the UK.

**9. Supporting the government's objective to promote the international competitiveness of the UK (HMT recommendation letter):** Please refer to the discussion of the PRA's secondary objective to facilitate a) the international competitiveness of the economy of the UK (including, in particular, the financial services sector through the contribution of PRA-authorised persons), and b) the growth of the economy of the UK in the medium to long term.

**10. The Legislative and Regulatory Reform Act 2006**: The LRRA sets out five principles for carrying out regulatory activities:

- Transparent: Please refer to the discussion of the relevant FSMA regulatory principle above.
- Accountable: This CP is publicly available for comment by industry and others, and will be scrutinised by HMT. FSMA contains other accountability mechanisms with which the PRA complies in making these rules.
- Proportionate: Please refer to the discussion of the relevant FSMA regulator principle above.
- Consistent: The proposed clarification of the person scope of the firm-facing provisions on manufacturers and adjustment to SS10/18 could result in greater consistency in the treatment of different categories of PRA-authorised firms. As well, the proposed policy changes will generally apply consistently across the manufacturers and institutional investors subject to these requirements (although see the discussion of the exemption from cash collateralisation requirements for retention in synthetic or contingent form above).
- Targeted only at cases in which action is needed: The PRA only proposes a limited number of adjustments to firm-facing requirements for which there is a clear rationale.

The Legislative and Regulatory Reform Act 2006 also requires the PRA to adhere to the Regulator's Compliance Code. The PRA has considered these requirements and observed that many of the themes overlap with some of the FSMA regulatory principles considered above.

6.4 The PRA has had regard to other factors as required. Where analysis has not been provided against a 'have regard' for the proposals in this CP, it is because the PRA considers that 'have regard' to not be a significant factor for these proposals.

### Impact on mutuals

6.5 The proposed rules to replace requirements on manufacturers of securitisations in the Securitisation Regulation, the Risk Retention Technical Standards, and the Disclosure Technical Standards would apply equally to all categories of PRA-authorised firms. The only qualification relates to the exemption from the cash collateralisation requirements for synthetic or contingent retention, which would be limited to CRR firms and Solvency firms, for the reasons set out above. The proposed rules to replace requirements on institutional investors in the Securitisation Regulation would apply equally to all PRA-authorised firms that are CRR firms or Solvency II firms. Therefore, the PRA considers the impact of the rules proposed in this CP on mutuals to be generally no different from the impact on other firms to which they apply.

### Equality and diversity

6.6 The PRA considers that the proposals would have no impact on equality and diversity.

## 7. Cost benefit analysis (CBA)

7.1 This Chapter sets out the PRA's CBA for the policy proposals in this CP.

### Approach to the CBA

7.2 As set out in Chapters 2-4, the PRA proposes to largely preserve the requirements on PRA-authorised persons when replacing the Securitisation Regulation, the Risk Retention Technical Standards, and the Disclosure Technical Standards with PRA rules. To the extent the proposed rules simply preserve these requirements, they would not result in additional benefits or costs.

7.3 However, the PRA proposes to make a limited number of policy adjustments when replacing requirements on PRA-authorised firms in the Securitisation Regulation and the Risk Retention Technical Standards, as detailed in Chapters 2 and 3. This CBA; therefore, considers the costs and benefits of these policy changes relative to the baseline of the

Securitisation Regulation, the Risk Retention Technical Standards, and the Disclosure Technical Standards and current market practice. Separate sub-sections are used for each proposed policy change.

7.4 In summary, the proposals in this CP would have the benefits outlined in Chapters 2 and 3 above. Overall, the costs to firms of the proposals are likely to be low, and some of the proposals could reduce costs for firms.

## CBA of proposals in Chapter 2 of this CP

### Clarification of the person scope of requirements on manufacturers

7.5 This section considers the benefits and costs of the proposals relating to person scope.

#### Benefits

7.6 The proposals would make it clear that non-CRR firms and non-Solvency II firms need to comply with requirements on manufacturers of securitisations if they manufacture securitisations even on a one-off basis and set supervisory expectations relating to compliance with these requirements. To the extent that such firms manufacture securitisations, or might do so in the future, this could protect investors in such securitisations.

#### Costs

7.7 The proposals could cause compliance costs for PRA-authorised non-CRR firms and non-Solvency firms if they manufacture any securitisations, including due to having to review and possibly enhance their arrangements, processes, and mechanisms for compliance with the relevant requirements. In practice, non-CRR firms and non-Solvency firms are unlikely to manufacture any securitisations. If they do, they might already be aware of the need to comply with the relevant requirements and meet the related supervisory expectations.

### Adjustments to due diligence requirements in relation to manufacturers disclosures

7.8 This section considers the benefits and costs of the proposed policy changes to due diligence requirements in relation to manufacturers' disclosures.

#### Benefits

7.9 The proposal would facilitate investment by institutional investors in securitisations by, on the whole, reducing compliance costs and legal risk. Please refer to the 'Adjustments to due diligence requirements in relation to manufacturers' disclosures' section in Chapter 2 for further details.

#### Costs

7.10 The PRA considers its proposal would not, on the whole, impose additional costs on institutional investors.

## Clarification of provisions on delegation of due diligence to a managing party

7.11 This section considers the benefits and costs of the clarification in rules replacing Article 5(5) that the delegating party would not itself be responsible for failure to comply with the due diligence obligations it has instructed a managing party subject to PRA or FCA rules to fulfil on its behalf in the relevant circumstances. Rather, the managing party would then be responsible.

7.12 The PRA considers it likely that market participants generally already interpret Article 5(5) in a manner consistent with the proposed clarification. Therefore, the PRA considers it unlikely that the proposed clarification would lead to behavioural changes in the market. Clearer drafting would further reduce legal uncertainty for market participants.

7.13 Under the proposed PRA rules, a delegating party would still be responsible for failure to comply with the due diligence obligations it has instructed a managing party to fulfil on its behalf in the relevant circumstances where the trustees and managers of an occupational pension scheme act as that managing party. In practice, the PRA considers that it is very unlikely that PRA-authorised persons would instruct the trustees and managers of an occupational pension scheme to act as a managing party. However, the PRA welcomes feedback on this point and on possible impacts on PRA-authorised firms.

## Non-performing exposures securitisations and the non-refundable purchase price discount

7.14 This section considers the benefits and costs of the PRA's proposal relating to the recognition of the NRPPD for NPE in the risk retention requirements for NPE securitisations. The PRA considers it to be unlikely that there are many NPE securitisations manufactured by PRA-authorised firms at the moment although this could change.

### Benefits

7.15 The PRA considers that NPE are usually securitised at a substantial discount to their nominal value. Allowing the risk retention to be calculated, where appropriate, with reference to the net value of NPE would reduce absolute risk retention requirements in relation to NPE securitisations. This could facilitate NPE securitisations by PRA-authorised persons and thereby the transfer of NPE to third parties. Such NPE securitisations could reduce their exposure to credit risk and increase their funding.

7.16 If the proposal results in any additional NPE securitisations, investors might also benefit from the opportunity to invest in them.

### Costs

7.17 The proposals would not impose additional compliance costs on manufacturers of securitisation.

7.18 The proposal would reduce absolute risk retention requirements in relation to NPE securitisations. In principle, this might reduce the alignment of manufacturers incentives with that of investors in relation to those securitisations. However, the proposal would also result in risk retention requirements that better reflect the value of the NPE that are securitised. Other requirements on manufacturers in relation to securitisations would also remain in place. Overall, the PRA considers it very unlikely that the proposal would have an adverse effect on investors in NPE securitisations.

## Clarification of timelines for manufacturers making available certain information

### 7.19 This section considers the benefits and costs of the proposed clarification of the timelines for manufacturers making available information under rules replacing Article 7(1)(b) to (d) of the Securitisation Regulation.

### Benefits

7.20 The proposed clarification could support institutional investors with managing their due diligence process.

### Costs

7.21 The proposals would not impose additional compliance costs on manufacturers of securitisation.

## Restrictions on resecuritisations, section 138BA of FSMA, and the proposed Statement of Policy

7.22 This section considers the benefits and costs of the proposed SoP on the exercise of the PRA's power under section 138BA of the Financial Services and Markets Act 2000 in relation to the proposed rules on the use of resecuritisations.

7.23 The proposed SoP provides clarity for firms on the circumstances in which the PRA would expect to grant permissions for securitisations under sections 138BA. The PRA considers it unlikely that the proposed SoP would result in material changes for firms. This is because it indicates that the PRA would usually envisage using this power only in the narrow circumstances broadly similar to those in which the PRA could currently grant permission for a resecuritisation under Article 8(2) of the Securitisation Regulation. The PRA considers that it has so far never used its power under Article 8(2) of the Securitisation Regulation to grant permissions for re-securitisations.

## CBA of proposals in Chapter 3 of this CP[18]

### Change of the retainer

7.24 This section considers the benefits and costs of the proposal to permit a change in the retainer in the event of insolvency.

#### Benefits

7.25 Allowing the transfer of the retention in the event of insolvency could avoid market disruption that could reduce returns to investors.

#### Costs

7.26 The proposal would not impose additional compliance costs on firms.

### 'Sole Purpose Test'

7.27 This section considers the benefits and costs of the proposed further specification of the 'sole purpose test'.

#### Benefits

7.28 The proposed specification could provide additional clarity on the 'sole purpose test' and support compliance.

#### Costs

7.29 The proposed further specification of the 'sole purpose test' adds details to the 'sole purpose test' currently contained in Article 6(1) of the Securitisation Regulation. In principle, these details could impose additional compliance costs on firms, who need to familiarise themselves with them and ensure continued compliance with the 'sole purpose test'. Some originators might also find it more difficult to argue that they are compliant with the 'sole purpose test' in light of the proposed further specification.

7.30 However, market participants have already had the opportunity to familiarise themselves with a broadly similar specification of the 'sole purpose test' in the EBA's (2018) **draft final risk retention technical standards** The PRA considers it likely that market participants generally considered this publication to be indicative of the FCA's and the PRA's expectations in relation to the 'sole purpose test'. This would reduce the risk that the proposed further specification of the 'sole purpose test' might disrupt existing arrangements. It would also reduce the additional compliance costs associated with this proposed specification. However, the PRA would welcome feedback from firms on this point.

## Risk retention for resecuritisations

7.31 This section considers the benefits and costs of the proposed clarification of risk retention for post-2019 resecuritisations.

7.32 The PRA is not aware of any post-2019 resecuritisations. The PRA also expects that the proposed clarification is broadly in line with market expectations. The PRA therefore considers it unlikely that the proposed clarification would lead to a behavioural change in the market. However, market participants may still value the additional clarity around the application of the risk retention requirements to resecuritisations.

## Exemption from cash collateralisation requirement for synthetic/contingent retention

7.33 This section considers the benefits and costs of the proposed extension of the exemption from the cash collateralisation requirement for retention in synthetic or contingent form from credit institutions to all CRR and Solvency II firms.

### Benefits

7.34 This proposal could reduce the compliance cost of firms that would be able to take advantage of this exemption.

### Costs

7.35 The PRA does not consider that the proposed extension of the exemption is likely to pose significant risks to investors. This is because the PRA considers that CRR firms and Solvency II firms, like credit institutions, are likely to be in a position to ensure compliance with risk retention requirements also when retaining in a synthetic or contingent form.

## Comparability of assets held on the balance sheet of the originator with assets transferred to the SSPE

7.36 This section considers the benefits and costs of the proposed specification of the ‘cherry picking’ restrictions in rules replacing Article 6(2) of the Securitisation Regulation.

### Benefits

7.37 The proposed specification could clarify, and support compliance with, ‘cherry picking’ restrictions in rules replacing Article 6(2) of the Securitisation Regulation. Clearer rules could lower costs for firms.

### Costs

7.38 The proposed further specification of the 'cherry picking' restrictions adds details to Article 6(2) of the Securitisation Regulation. In principle, these details could impose additional compliance costs on firms, who need to familiarise themselves with them and ensure continued compliance with the 'cherry-picking restrictions'. In particular, they might need to review their policies, procedures, and controls for complying with Article 6(2). They would also need to assess in line with the proposed specification for each securitisation whether assets held on the balance sheet are comparable to the assets to be transferred to the SSPE for the purposes of Article 6(2). This assessment would involve a degree of judgment.

7.39 However, market participants have already had the opportunity to familiarise themselves with a broadly similar specification of the 'cherry picking' restrictions in the EBA's (2018) **draft final risk retention technical standards** The PRA considers it likely that market participants generally considered this publication to be indicative of the FCA's and the PRA's expectations in relation to the 'cherry picking' restrictions. This would reduce the additional compliance costs associated with the proposed specification of the 'cherry picking' restrictions. However, the PRA would welcome feedback from firms on this point.

## Other proposed minor adjustments to risk retention requirements

7.40 The PRA does not consider that other proposed minor adjustments to risk retention requirements are likely to have material benefits or costs as they are likely to be broadly consistent with current market practice. However, to the extent this is not the case, some additional compliance costs could arise for firms, particularly due the clarification that information about the risk retention must be included in 'the final offering document, prospectus, transaction summary or overview of the main features of the securitisation'. The PRA would welcome any feedback from firms on the impacts of these minor proposed adjustments.

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1. The term 'manufacturers' is used as shorthand for originators, original lenders, sponsors, and securitisation special purpose entities (SSPEs), as defined in the proposed rules.
2. The proposed rules will apply to PRA-authorised manufacturers and institutional investors (as defined in the rules) that are UK undertakings (ie not to UK branches of overseas PRA-authorised firms). References to PRA-authorised manufacturers and institutional investors in this CP should be read accordingly.
3. See HMT's 2022 '**Building a smarter financial services framework for the UK – Policy statement** .
4. Article 43(9) of the Securitisation Regulation provides that 'in the case of securitisations which do not involve the issuance of securities, any references to 'securitisations the securities of which were issued' shall be deemed to mean 'securitisations the initial securitisation positions of which are created', provided that the Securitisation Regulation applies to any securitisations that create new securitisation positions on or after 1 January 2019.'
5. Please see FCA's webpage on **securitisation** for details.
6. For further information please see **Transitioning to post-exit rules and standards**.
7. An originator is an entity that:

(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.

8. In summary, a sponsor is defined as a credit institution or an investment firm (as further specified in Article 2(5) of the Securitisation Regulation), whether located in the UK or in a third country, which:

   (1) is not an originator; and

   (2) either: (a) establishes and manages an asset-backed commercial paper (ABCP) programme or other securitisation that purchases exposures from third party entities; or (b) 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 or territory in which the entity is established.

9. In summary, an SSPE is defined as a corporation, trust, or other entity, other than an originator or sponsor, which is established for the purpose of carrying out one or more securitisations. An SSPE's activities are limited to those appropriate to accomplishing that objective and its structure is intended to isolate the obligations of the SSPE from those of the originator.

10. Under section 85 of FSMA, an approved prospectus is required for: (i) the offer of transferable securities to the public in the United Kingdom; and (ii) the admission of transferable securities to trading on a regulated market situated or operating in the United Kingdom.

11. Please refer to footnote 6.

12. Please refer to footnote 7.

13. An original lender is 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.

14. This is an ABCP programme that its sponsor directly and fully supports by providing to the SSPE(s) one or more liquidity facilities covering at least all of the following:

    (a) all liquidity and credit risks of the ABCP programme;

    (b) any material dilution risks of the exposures being securitised; and

    (c) any other ABCP transaction-level and ABCP programme-level costs if necessary to guarantee to the investor the full payment of any amount under the ABCP.

15. Article 8(4) of the Securitisation Regulation.

16. Or over a maximum of four years where the life of the transaction is longer than four years.

17. Under section 85 of FSMA, an approved prospectus is required for: (i) the offer of transferable securities to the public in the United Kingdom; and (ii) the admission of transferable securities to trading on a regulated market situated or operating in the United Kingdom.

18. This section does not cover adjustments of the risk retention methods for NPE securitisations as this has already been considered as part of the 'Non-performing exposures securitisations and the non-refundable purchase price discount' section of this chapter.

# Appendices

Appendix 1: Draft Securitisation Rules instrument (PDF)

Appendix 2: Draft amendments to supervisory statement 10/18 – Securitisation: General requirements and capital framework (PDF)

Appendix 3: Draft statement of policy – Permissions for resecuritisation (PDF)

Appendix 4: PRA statutory obligations (PDF)

Appendix 5: Draft templates (ZIP)