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SYNTHETIC SECURITISATION: COMPLETING THE EU REGULATORY PUZZLE

One of the key regulatory reforms affecting synthetic securitisation in recent years was the introduction of the STS regime for on-balance-sheet (synthetic) securitisations in April 2021. However, when the regime was introduced, a number of elements of the framework were left to be supplemented through regulatory technical standards and guidelines, none of which have yet been finalised. This article provides a short update on these various initiatives.

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Key Issues

- There have recently been a number of significant developments in the EU regulatory framework for synthetic securitisations, including:
  - The publication of the EBA final draft RTS on the determination of the exposure value of synthetic excess spread;
  - The impending implementation of the latest Basel accords;
  - The publication of the EBA final draft RTS on the homogeneity requirements; and
  - The EBA public consultation on proposed guidelines on the STS criteria.
- Certain elements included in the relevant final draft RTSs are expected to be welcomed by the industry including (a) the introduction of an exclusion of the 'SES for future periods' component from the calculation of the SES exposure value when certain conditions are met and

(ii) grandfathering provisions in respect of existing transactions.

On 9 April 2021, as part of the EU Capital Markets Recovery Package, the simple, transparent and standardised ("**STS**") framework for securitisation in the EU was extended to apply to synthetic (i.e. on-balance-sheet) securitisations. The extension of the STS framework to synthetic securitisation was widely welcomed by the market, with the first transactions to adopt the label closing shortly after the regime came into effect. The regime has been particularly beneficial for banks operating under the Standardised Approach, as it reduces the "p" factor[1] used in the calculation of the risk-weights for the standardised approach by 50%. In addition, by reducing the risk-weight floor on the senior retained tranche from 15% to 10%, it has improved the efficiency of transactions for banks under both the Standardised Approach and the IRB Approach. Recent indications are that more than 50% of synthetic securitisations executed by EU banks now adopt the STS framework.

However, the framework is not yet complete. The level 1 text adding the framework into the EU Securitisation Regulation included a number of mandates for the European Banking Authority ("**EBA**"), including mandates to prepare guidelines on the harmonised interpretation and application of the simple, transparent and standardised ("**STS**") framework for on-balance-sheet ('synthetic') securitisations, and to prepare draft regulatory technical standards ("**RTS**") supplementing the framework.

Since the publication of 'Structured Debt in a New World' in March 2022[2], there have been a number of significant developments on the STS front, with the EBA launching a public consultation on proposed guidelines on the STS criteria for on-balance-sheet securitisations and publishing its final draft RTS

[1] The "p" factor is a non-neutrality factor used to deliberately increase the total capital charges associated with a securitised asset pool as compared to holding all the underlying assets directly on balance sheet. See further explanation below in the section "Basel IV, the output floor and the "p" factor".
[2] https://www.cliffordchance.com/briefings/2022/03/structured-debt-in-a-new-world.html

on the homogeneity requirements for STS synthetic securitisations. Furthermore, the start of 2023 has also been eventful for the synthetic securitisation world more generally with the publication of the EBA's final draft RTS on the determination of the exposure value of synthetic excess spread and the impending implementation of the latest Basel accords in the EU legislative framework.

For the reasons set out below, the outcome of the EBA consultations and the publication of the relevant final draft RTSs are expected to be welcomed by the industry. Equally, the implementation of the latest Basel accords in EU legislation is also something that the industry awaits, in light of the current discussions in trilogue on whether the "p" factor should be divided by two for the purposes of the output floor calculation until a wider review of the securitisation framework as part of the Capital Markets Union Action Plan is undertaken.

Key Issues (cont.)

- The implementation of the latest Basel accords in EU legislation is also something that the industry awaits, in light of the current discussions in trilogue on whether the "p" factor should be divided by two for the purposes of the output floor calculation.

EBA Final Report on Determining the Exposure Value for Synthetic Excess Spread

On 24 April 2023, the EBA published its final draft RTS specifying how the exposure value of synthetic excess spread ("SES") should be determined (the "Final SES RTS").[3] The proposed RTS are intended to give effect to the amendments that were made to Articles 248 and 256 of the CRR by Regulation (EU) 2021/558, which (a) established that SES must be considered a securitisation position by originator institutions, meaning that it must have an 'exposure value' and be risk-weighted in essentially the same way as a first loss tranche in the securitisation and (b) specified that the elements that should be included in the exposure value of the SES include (i) any SES recognised by the originator institution in its income statement that is still available to absorb losses, (ii) any SES in any previous periods that is still available to absorb losses, (iii) any SES for the current period that is still available to absorb losses, and (iv) any SES for future periods.

The Final SES RTS make two sets of proposals regarding how the exposure value of SES should be calculated. For SES that falls into categories (i) to (iii) above, the proposed RTS specify that the amount designated by the originator to absorb losses and that is still available for this purpose should be considered in full for the determination of the exposure value. This is largely unchanged from the approach that was proposed in the draft RTS[4] on which the EBA launched a public consultation on 9 August 2022 (the "**Consultation SES RTS**").

For SES falling into category (iv) above (i.e., for future periods), however, the EBA departed from its original proposal. In the Consultation SES RTS, the EBA had proposed two approaches which an originator could apply for this purpose (although it would have been required to apply the same

[3] EBA Final Report on Draft Regulatory Technical Standards specifying the determination by originator institutions of the exposure value of synthetic excess spread pursuant to Article 248(4) of Regulation (EU) No 575/2013, EBA/RTS/2023/02: https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Draft%20Technical%20Standards/2023/EBA-RTS-2023-02%20RTS%20on%20calculation%20of%20exposure%20value%20of%20SES/1054910/Draft%20RTS%20on%20the%20calculation%20of%20the%20exposure%20value%20of%20SES.pdf

[4] Consultation Paper, Draft Regulatory Technical Standards, Specifying the determination by originator institutions of the exposure value of synthetic excess spread pursuant to Article 248(4) of Regulation (EU) No 575/2013, EBA/CP/2022/1: https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Consultations/2022/Consultation%20on%20draft%20RTS%20on%20the%20determination%20by%20originator%20institutions%20of%20the%20exposure%20value%20of%20SES%20in%20securitisations/1037741/CP%20on%20draft%20RTS%20on%20calculation%20of%20exposure%20value%20of%20SES.pdf

approach for all securitisations: the Full Model Approach ("**FMA**") and the Simplified Model Approach ("**SMA**").

- Under the FMA, originators would have been required to determine the relevant losses expected to be covered by the SES for each period by comparing (i) the SES calculated for each of the future periods with (ii) the expected losses of each period. This determination was expected to be made under 3 scenarios (a frontloaded, an evenly-loaded and a backloaded loss distribution scenario), with the sum of the losses expected to be covered by SES in these future periods constituting, in each scenario, the exposure value of SES for such future periods. Then, the arithmetic average of the exposure value of SES calculated under each of these three scenarios would constitute the SES for future periods on the relevant calculation date.
- Under the SMA, the exposure value would be calculated by multiplying the SES for the upcoming period by the weighted average life ("**WAL**") of the reference portfolio (as at the calculation date) and a scalar factor representing the capacity of the SES to absorb losses. The scalar factor was correspondingly conservative (either 0.8 or 1 depending on whether there is a "use-it-or-lose-it" ("UIOLI") mechanism). The EBA's expectation was that using the SMA would generally lead to a higher exposure value than the FMA.

The Consultation SES RTS attracted a large number of industry responses, many of which expressed concerns that the above approach would render the use of SES uneconomic for the originator in virtually all synthetic securitisations. As far as the proposed calculations methods were concerned, it was argued that requiring an originator to hold capital against what was effectively the lifetime expected losses (capped at the contractual amount of SES) is inconsistent with the principles underpinning the capital framework, which is based on a one-year time horizon. In addition, some of the responses expressed a preference for the status quo, i.e. the supervisory practices currently implemented by the European Central Bank, to be broadly maintained, while others highlighted the need for the regulatory framework for securitisation to adopt a consistent approach to traditional and synthetic securitisations.

Following consideration of the relevant feedback by the EBA, the Final SES RTS dropped the proposed FMA. The SMA was retained with a reduced scalar of 0.6 (rather than 0.8) for the UIOLI mechanism. The EBA noted in that regard that the SMA with the 0.6 scalar is understood to have considerably less negative impact on the activities of the EIF compared to the 0.8 scalar or compared to the FMA.

However, the two most important developments brought by the Final SES RTS are the introduction of (i) an exclusion of the 'SES for future periods' component from the calculation of the SES exposure value when certain conditions are met and (ii) grandfathering provisions in respect of existing transactions.

In particular, Article 6(2) of the Final SES RTS provides a derogation whereby the future component of the SES exposure value is set at zero for UIOLI SES if (a) the one-year SES amount is lower than or equal to the one-year expected loss amounts of the securitised exposures and (b) the credit

protection agreement explicitly provides that the realised losses to be covered by the one-year SES amount do not exceed the realised net income of the securitised exposures. This second requirement is intended to produce an outcome which is broadly analogous to the use of excess spread in a traditional securitisation, where the income from the securitised exposures that is not used to cover the costs of the securitisation is available to absorb losses before any residual excess spread is paid through to the originator. In the context of a synthetic securitisation, because the securitised exposures remain on the balance sheet of the originator, the funding cost of those exposures is largely retained by the originator. For this reason, for the purpose of determining the net income of the securitised exposures, the originator is required to deduct from the income both the actual credit protection fees and other direct costs of the securitisation paid by the originator as well as a pro-rata share of the originator's costs and expenses (other than the credit protection fees and other direct costs of the securitisation) for the relevant year.

While this derogation is a very welcome development, it will require modification to existing practice for the use of SES, by requiring the introduction of an ex-post reconciliation to ensure that the amount of losses actually covered by SES for a given year did not exceed the net income for that year and, if it did, for the investors to cover those losses to the extent of the excess. It remains to be seen how such an adjustment mechanic will work in practice, or how it will change the way investors assess the inclusion of SES in transactions.

The introduction of grandfathering for synthetic securitisations originated prior to the entry into force of the RTS was a welcome, and largely unexpected, development in the Final SES RTS. Under Article 248(1)(b) of the CRR, the RTS were supposed to have been submitted to the Commission by 10 October 2021, in order to provide time for them to enter into force before the requirement to calculate the exposure value of SES came into effect on 10 April 2022. In the absence of the RTS, there has therefore been considerable uncertainty since 10 April 2022 as to exactly how originators are supposed to comply with the requirements of Article 248(1)(a) of the CRR. As the principal supervisor in the EU, the ECB has continued to apply its pre-existing practice of requiring originators to hold capital against a one-year rolling amount of SES. The Final SES RTS effectively endorse that approach by permitting the originators of existing securitisations to continue applying whatever method they have been applying to date in accordance with applicable supervisory practices until the maturity of that securitisation.

Notwithstanding some residual concerns from originators about the method of calculating the net income of the securitisation for the purpose of excluding the value of SES for future periods, it is expected that the industry will generally welcome the EBA's revised proposals, which largely addressed the concerns raised during the consultation process. The final draft RTS will be submitted to the Commission for endorsement and will then be published in the Official Journal of the European Union.

Basel IV, the Output Floor and the "p" Factor

Through a series of amendments between December 2017 and 2019, the Basel Committee on Banking Supervision finalised the third instalment of the Basel accords (also known as Basel 3.1 or "**Basel IV**") creating a regulatory framework for bank capital adequacy, stress testing and market liquidity risk.

One of the key objectives of the Basel IV reforms was the reduction of excessive variability in the calculation of risk-weighted assets ("**RWAs**") between banks using the standardised approach and banks using internal models and an improvement in transparency and comparability of different banks' capital calculations and ratios.

To that end, one of the amendments to the Basel III framework was the addition of the "output floor" (the "**SA Output Floor**"), which was created to address modelling risk for internal calculations (for securitisations, this is the SEC-IRBA approach). In particular, the SA Output Floor sets a limit on the amount by which a bank's internal models can reduce its overall capital requirement for credit risk compared with the requirement that would apply under the Standardised Approach. This will work by providing that, in aggregate, SEC-IRBA-generated RWAs cannot fall below 72.5% of the equivalent RWAs computed under the standardised approaches. This is being phased in over a 6-year implementation phase (known-as "phase-in" for the SA Output Floor) during which the minimum SEC-IRBA-generated RWAs will slowly rise from 50% to 72.5% of equivalent standardised RWAs.

Both the EU and the UK have initiated the relevant legislative and regulatory processes to implement the Basel IV framework. On 27 October 2021, the European Commission published proposed amendments to the CRR which, inter alia, introduce the SA Output Floor into EU law (referred to as "**CRR3**"). The proposed amendments under CRR3 are currently at the 'trilogue' stage, with both the Council and the European Parliament already having published their positions on 31 October 2022[5] and 9 February 2023[6] respectively. Latest discussions as April 2023 appear to still include the SA Output Floor as a point of friction in the negotiations. In the UK, the Financial Services Act 2021 grants HM Treasury the power to make consequential provisions or other regulations to incorporate Basel IV into the UK's prudential framework and to delegate legislative powers, as appropriate, to the Prudential Regulation Authority ("**PRA**") (and the Financial Conduct Authority). To that end, HM Treasury and the PRA each launched a consultation on 30 November 2022 in respect of the implementation of Basel IV.[7] The PRA's consultation includes the substantive text of the amendments and, as expected, maintains a position of "super-equivalence" with the Basel standards.

The SA Output Floor has a particularly significant impact on a SRT securitisation, in a way which does not appear to have featured in the formulation of the floor. This impact results from the effect of tranching. In order to achieve significant risk transfer, an originator is required to transfer, at a minimum, a certain amount of capital requirements associated with the securitised portfolio. A further key input into each of the SEC-IRBA and SEC-SA formulae used to calculate the risk-weight for each retained tranche in the securitisation is the pre-securitisation capital charge of the securitised

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[5] General approach on regulation (EU) No 575/2013 as regards requirements for credit risk, credit valuation adjustment risk, operational risk, market risk and the output floor, 2021/0342 (COD): https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST_13772_2022_INIT

[6] Report on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 as regards requirements for credit risk, credit valuation adjustment risk, operational risk, market risk and the output floor, A9-0030/2023: https://www.europarl.europa.eu/doceo/document/A-9-2023-0030_ EN.pdf

[7] HM Treasury, Implementation of the Basel 3.1 Standards, Consultation (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1120898/HMT_Basel_3.1__consultation_document.pdf) and PRA CP 16/22 (https://www.bankofengland.co.uk/prudential-regulation/publication/2022/november/implementation-of-the-basel-3-1-standardswhich), which closed in end March.

portfolio. As a general rule, the unsecuritised capital charge for a portfolio will be significantly higher under the Standardised Approach than it would be under the IRB Approach. It follows from this that, in order to minimise the risk-weight for the retained senior tranche of a SRT securitisation, the amount of risk to be transferred (ie, the thickness of the first loss or mezzanine tranche(s) placed with investors) will need to be much greater when applying the SEC-SA than it will be under the SECIRBA. Indeed, the difference is so significant that when a portfolio is tranched under the SEC-IRBA, a placed tranche of 8% will usually be sufficient to generate a senior tranche risk-weight of 15% or 10% (the risk-weight floor for non-STS and STS securitisations, respectively). However, an 8% tranche would likely result in a senior tranche risk-weight under the SEC-SA in excess of 70%, which is clearly uneconomic. The only way of avoiding this outcome is to place much thicker tranche(s) with investors, which significantly increases the cost of the securitisation, or by otherwise modifying the SEC-SA formula to reduce the differential between the risk-weights generated by the SEC-IRBA and the SECSA for the same tranching.

The imposition of the SA Output Floor has been the subject of extensive criticism within the securitisation industry[8]. In addition, its pending implementation has re-energised the industry's calls for a recalibration of the SEC-SA by lowering the "p" factor. The "p" factor is a nonneutrality correction factor included in both the SEC-IRBA and the SEC-SA, which aims to capture the agency and model risks prevalent in securitisations. Under SEC-SA, there is a fixed "p" factor of 1 (for non-STS securitisations) and 0.5 (for STS securitisations). Under the SEC-IRBA, banks may calculate their own supervisory parameter based on four risk factors, i.e., the framework (correlation effect), the granularity of the securitised pool for wholesale, the capital charge for the underlying exposures, the average loss given default of the securitised pool, plus one non-risk parameter (tranche maturity MT, capped at 5 years), which is subject to a floor of 0.30.

In practice, the "p" factor imposes a premium capital charge on all securitisations (regardless of seniority, maturity, or any other credit enhancing features of the transaction), and hence, has been questioned by market participants. The industry has argued that there are already alternative correction factors which impose an implicit premium on securitisations, including capital floors. The introduction of yet another correction factor in the form of the SA Output Floor therefore makes the industry's requests to lower the "p" factor topical once again.

A proposal to reduce the "p" factor was recently considered by the Joint Committee of the European Supervisory Authorities (EBA, EIOPA and ESMA) ("**ESAs**") (as to which see the article entitled "ESAs Joint Advice: a false dawn for the European securitisation prudential framework?" earlier in this volume) in the context of their response to the European Commission's October 2021 call for advice on the review of the securitisation prudential framework. In their

[8] In its Research Report entitled "Impact of the SA Output Floor on the European Securitisation Market" and dated 11 November 2022, the Association for Financial Markets in Europe concluded that, if the Output Floor is implemented as currently envisaged, it would significantly disfavour corporate securitisations, both for large corporates and SME portfolios, and it would likely result in existing SRT transactions failing the Significant Risk Transfer (SRT) test applied by EU supervisors: https:// www.afme.eu/Portals/0/DispatchFeaturedImages/Impact%20of%20the%20SA%20Floor%20on%20European%20Securitisation%2022-65a%2014-6-22%20v68.pdf

banking specific advice dated 12 December 2022,[9] rather than reducing the "p" factor, the ESAs recommended a reduction in the risk weight floor applicable to senior tranches retained by originators instead. In particular, the EBA considered that this would be a more impactful measure than a reduction of the "p" factor, which it believes increases cliff effects (i.e. the "p" factor incorporates the capital non-neutrality but also serves as a smoothing parameter to avoid cliff effects). This would not, however, address the issue caused by the SA Output Floor because, for the reasons summarised above, when the SEC-SA formula is applied, the risk-weight of the retained senior tranche would significantly increase, to be well above the floor anyway.

In light of the above, the publication of the European Parliament ECON Committee's Report dated 9 February 2023 in respect of the Commission's CRR3 proposal was a surprising development. That is because the report introduces a transitional provision[10] whereby the "p" factor under the SEC-SA should be reduced by 50% for the purposes of the SA Output Floor calculation until a wider review of the securitisation framework as part of the Capital Markets Union Action Plan is undertaken. Following publication of the European Parliament report, there have also been indications that the EU Commission would consider not only halving the "p" factor under the SEC-SA per the above, but also making the "p" factor under the SEC-IRBA subject to a floor of 0.1 (down from 0.3 currently), and subject to a cap of 0.3. At the time of writing, the political negotiations on CRR3 are incomplete, making it uncertain whether this amendment will make it into the final CRR3 text and, if so, in what form.

There is currently no proposal from the PRA to make a similar adjustment to the "p" factor in connection with the UK implementation of Basel IV, although the PRA has acknowledged the industry concerns and that they are intending to discuss its implications with affected industry participants.

EBA Final Report on Draft RTS on Homogeneity of Underlying Exposures in STS Securitisations

On 14 February 2023, the EBA published its final report (the "**Homogeneity Final Report**")[11] on draft RTS specifying the criteria for the underlying exposures in securitisation transactions to be deemed homogeneous. The relevant mandate was part of the introduction of a cross-sectoral framework for STS on-balance-sheet synthetic securitisations (see Article 26b(13) of the Securitisation Regulation).

For the purposes of developing the draft RTS, the EBA launched a public consultation on 28 July 2022[12] where it considered a few options, including (i)

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[9] Joint Committee Advice on the review of the securitisation prudential framework (Banking), JC/2022/66: https://www.eiopa.europa.eu/system/files/2022-12/jc_2022_66_-_jc_advice_on_the_review_of_the_securitisation_prudential_framework_-_banking.pdf

[10] See the proposed amendments to Article 465 of the Commission's CRR3 proposal.

[11] Final Report, Draft Regulatory Technical Standards on the homogeneity of the underlying exposures in STS securitisation under Articles 20(14), 24(21) and 26b(13) of Regulation (EU) 2017/2402, as amended by Regulation (EU) 2021/557, EBA/RTS/2023/01: https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Draft%20Technical%20Standards/2023/EBA-RTS-2023-01%20RTS%20on%20homogeneity/1051902/Final%20draft%20Regulatory%20Technical%20Standards%20on%20the%20homogeneity%20of%20the%20underlying%20exposures%20in%20STS%20securitisation.pdf

[12] Consultation Paper, Draft Regulatory Technical Standards on the homogeneity of the underlying exposures in STS securitisation under Articles 20(14), 24(21) and 26b(13) of Regulation (EU) 2017/2402, as amended by Regulation (EU) 2021/557, EBA/CP/2022/09: https://www.eba.europa.eu/sites/default/documents/files/

to extend the scope of Delegated Regulation (EU) 2019/1851 on homogeneity of the underlying exposures for traditional securitisations (the "**Existing Homogeneity RTS**") to on-balance-sheet securitisations with certain amendments or (ii) to develop a new separate RTS for STS on-balance-sheet securitisations, and opted for the former.

Two items stood out from the EBA's proposals and attracted considerable market feedback. The first one was the proposal that a separate type of obligor for exposures to large corporates should be introduced making it difficult to obtain an STS designation for a portfolio containing large corporate exposures along with other corporate exposures. The term "large corporate" was to have the meaning given to it in Article 142(1) point (5a) of the Commission's CRR3 proposal, i.e. "any corporate undertaking having consolidated annual sales of more than EUR 500 million or belonging to a group where the total annual sales for the consolidated group is more than EUR 500 million". The second one was the proposal that on-balance-sheet synthetic securitisations which were deemed homogeneous before the entry into force of the amending RTS should fall within the scope of application of the amending RTS one year after its entry into force.

For the first item, respondents highlighted, among other things, the difficulties of securitising exposures on the basis of the proposed definition, and the impact on sufficient portfolio granularity given that the definition does not align with how most banks distinguish exposures for the purposes of their origination and underwriting standards. As a result, the EBA decided to abandon the proposal and recommended that the distinction in the Existing Homogeneity RTS, which differentiates between SME and non-SME corporate obligors, should be maintained. In addition, and similar to the approach followed in the Existing Homogeneity RTS, no definition of SMEs has been introduced and it is expected that the assignment of a particular exposure to a category will be based on the internal classification of the originator.

For the second item, respondents pointed out that the lack of grandfathering provisions for on-balance-sheet STS securitisations would have a significant impact on the market, as it would result in a large number of transactions losing their STS classification due to the inability to amend existing transactions to meet the new requirements. Following this feedback, the EBA now proposes in its Final Report that grandfathering provisions should also be included for STS on-balance-sheet securitisations which were notified to ESMA prior to the entry into force of the RTS.

While there had been some hope that the EBA might include some additional homogeneity classifications for certain types of corporate exposures, the industry will likely welcome the EBA's decision to retain the status quo, which has been working reasonably well for on-balancesheet STS securitisations since April 2021.

The rest of the changes that were the subject of the EBA's public consultation remained intact. In summary, the substantive proposals in the Homogeneity Final Report comprise:

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document_library/Publications/Consultations/2022/Consultation%20paper%20on%20draft%20RTS%20on%20the%20homogeneity%20of%20the%20underlying%20 exposures%20in%20STS%20securitisation/1037481/Consultation%20Paper%20on%20the%20draft%20RTS%20on%20homogeneity.pdf

- An extension of the scope of application of the Existing Homogeneity RTS to on-balance-sheet synthetic securitisations entered into after the entry into force of the amending RTS.
- A clarification in respect of (i) the auto loans and leases asset type and (ii) the credit card receivables asset type that, where the relevant homogeneity factor is the "type of obligor" category of individuals, this should also include those enterprises where the originator applies the same credit risk assessment approach as for exposures to individuals.
- An amendment to the "credit facilities provided to individuals for personal, family or household consumption purposes" asset type to also include credit facilities provided to enterprises where the originator applies the same credit risk assessment approach as for individuals.

The final draft RTS will be submitted to the Commission for adoption (with or without amendment) and will then be published in the Official Journal of the European Union.

EBA Consultation on STS Guidelines

On 21 April 2023, the EBA launched a public consultation on its draft guidelines on the STS criteria for on-balance-sheet securitisation[13] ("**Synthetic STS Guidelines**"). In line with the EBA Guidelines published in December 2018 in connection with non-ABCP[14] and ABCP securitisations[15], the proposed Synthetic STS Guidelines aim to provide a single point of consistent and correct implementation of the STS criteria for synthetic securitisations.

Therefore, for the STS requirements that are similar across synthetic and non-ABCP securitisations, the Synthetic STS Guidelines are identical to the interpretation provided in the EBA Guidelines on non-ABCP securitisations. The EBA has helpfully also included a comparison section, explaining in each instance whether the interpretation is aligned between the two types of securitisations or not.

There are also instances, however, where (a) while the requirements are common, specificities of on-balance-sheet securitisations require the interpretation to be adapted or (b) the requirements are specific to synthetic securitisations and there are no equivalent requirements for non-ABCP securitisations.

The first category includes, for example, requirements regarding the amortisation of tranches set out in Article 26c(5) of the Securitisation Regulation. In particular, the guidance in the Guidelines on non-ABCP

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[13] Consultation Paper on draft Guidelines on the STS criteria for on-balance-sheet securitisations, EBA/CP/2023/09: https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Consultations/2023/Consultation%20on%20draft%20Guidelines%20on%20the%20STS%20criteria%20for%20 on-balance-sheet%20securitisations/1054818/CP%20on%20draft%20Guidelines%20on%20the%20STS%20criteria%20for%20on-balance-sheet%20securitisations.pdf

[14] Final Report on Guidelines on the STS criteria for non-ABCP securitisation, EBA/GL/2018/09: https://www.eba.europa.eu/sites/default/documents/files/documents/10180/2519490/feb843e1-9b01-420a-a956-332bfc513922/Guidelines%20on%20STS%20criteria%20for%20non-ABCP%20securitisation.pdf?retry=1

[15] Final Report on Guidelines on the STS criteria for ABCP securitisation, EBA/GL/2018/08: https://www.eba.europa.eu/sites/default/documents/files/documents/10180/2519490/4d16ee5b-2ef9-4f8c-9c75-f0e5e84da674/Guidelines%20on%20STS%20criteria%20for%20ABCP%20securitisation%29.pdf

securitisation is focused on interpreting the term “performance-related triggers”, which, for STS on-balance-sheet securitisations, has in the meantime been clarified in the RTS on performance related triggers. In addition, the Synthetic STS Guidelines provide further clarification of the terms “reversion to non-sequential amortisation”, “significant losses”, “last part of the maturity of the transaction”, and “back-loaded loss distribution scenario”, as a follow up to the requirements specified in the meantime in the RTS on performance-related triggers.

The second category includes, among others, requirements in relation to the recourse to high-quality collateral (Article 26e(10)), synthetic excess spread (Article 26e(7)), early termination events exercisable by the investor (Article 26e(6)) or the originator (Article 26e(5)) or the verification agent (Article 26e(4)) and in respect of which, in some instances, the EBA considers the level 1 text sufficiently clear and does not provide any further interpretation and, in other instances, where additional guidance is provided.

The consultation will be open until 7 July 2023. Following their finalisation, the guidelines will be translated into the official EU languages and published on the EBA website.

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