

# Clients & Friends Memo

## The End of the Temporary Transitional Power: Securitisation Reporting

10 February 2022

### Brexit and the Temporary Transitional Power

On 31 January 2020, the UK ceased to be a member of the EU. Following a transition period, EU law ceased to be applicable in the UK with effect from 11 p.m. on 31 December 2020. Directly applicable EU legislation, such as the EU Securitisation Regulation and associated technical standards, was 'onshored' into UK domestic law as of that date. Such onshored financial services legislation was subject to changes which reflected, among other things, the changed relationship between the UK and the EU, the replacement of EU authorities and regulators with their UK equivalents, and differing regulatory priorities in the EU and UK.

In order to give UK authorised firms enough time to adapt to this partial overhaul of the regulatory system, the UK Government empowered the Financial Conduct Authority ("**FCA**") and the Prudential Regulation Authority ("**PRA**") to make transitional provisions in respect of the onshored legislation for an interim period. This "temporary transitional power" (the "**TTP**") enabled the UK regulators to delay the application of, or otherwise modify, regulated firms' regulatory obligations where they have changed as a result of changes made to legislation through the onshoring process.

Using these powers, the PRA and the FCA elected to provide broad transitional relief, with key exceptions, from 31 December 2020 until 31 March 2022 (the "**TTP period**"). This means that, subject to some limited exceptions, during the TTP period UK firms did not need to comply with their obligations under the amended onshored legislation, but instead could satisfy their obligations through compliance with the previously applicable EU regulations.

### The UK Securitisation Regulation and the TTP Period

Article 7 of the UK Securitisation Regulation requires the originator, sponsor and securitisation special purpose entity of a securitisation to make certain prescribed information relating to the securitisation available to investors, competent authorities and, upon request, to potential investors. The designated reporting entity must make certain prescribed information available to holders of a securitisation positions, to the relevant competent authorities and, upon request, to potential investors. These disclosures must be made using the templates provided for in regulatory technical standards. The EU Regulatory Technical Standards (the "**EU Transparency RTS**") had applied in the UK and EU since 23 September 2020. The onshored UK version of these Technical Standards (the "**UK Transparency RTS**") have applied in the UK since 31 December 2020.

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During the TTP period, UK banks and investment firms subject to the UK Securitisation Regulation were permitted to satisfy their obligations under Article 7 of the UK Securitisation Regulation by using the templates provided for in the EU Transparency RTS. From the end of the TTP period, where such firms are subject to the Article 7 obligation under the UK Securitisation Regulation, they will be required to use the relevant templates in the UK Transparency RTS. Although the templates are substantially the same in content, there are small technical differences (e.g., the industry code field for the obligor).

The requirement for reporting under *both* regimes may arise in some scenarios, such as:

- where a transaction such as a CLO has a UK manager and an EU securitisation special purpose entity (“**SSPE**”), the UK manager will have a regulatory obligation to complete the UK templates and the EU SSPE will have a regulatory obligation to complete the EU templates; or
- where there is a UK entity that is an originator, sponsor or original lender (regardless of whether it is acting as the retention holder) and there is an EU SSPE, the UK entity will have a regulatory obligation to complete the UK templates and the EU SSPE will have a regulatory obligation to complete the EU templates.

In terms of the due diligence requirements imposed on UK investors under the UK Securitisation Regulation and EU investors under the EU Securitisation Regulation, it is unclear whether EU investors can satisfy their due diligence requirements under Article 5 through receipt of the UK templates. UK investors, however, should be able to satisfy their due diligence obligations under Article 5 of the UK Securitisation Regulation by receiving the EU templates, as the UK Securitisation Regulation permits them to rely on receiving transparency information which is “substantially the same” as that contained in the UK Transparency RTS. For example, the UK templates should not need to be completed in respect of securitisations with EU SSPEs where there is no UK originator, sponsor or original lender.

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If you have any questions, please feel free to contact any of the following Cadwalader attorneys.

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