

Clients & Friends Memo

The UK and Europe Introduce New Securitisation Rules

20 July 2023

The UK and Europe have released a number of updated requirements for securitisations that, while not effecting material changes, are notable in their scope and number. Below, we give a brief guide to these changes and their implementation schedules.

Final Text of the EU Securitisation Regulation Risk Retention Requirements

Following the publication of the Final Draft Regulatory Technical Standards (the “**RTS**”) specifying the requirements for originators, sponsors and original lenders in relation to risk retention (see our previous [Client and Friends memo from April 2022](#)), on 7 July 2023, the European Commission has endorsed and adopted the [final text](#) of the risk retention RTS (the “**Final Text**”).

As little of substance has changed between the RTS and the Final Text, we thought it helpful to briefly recap on the more substantive elements covered by the RTS:

1. The application of risk retention options for non-performing exposure (“**NPE**”) securitisations;
2. Clarification on how the requirements for the fees payable to the risk retainer comply with risk retention requirements;
3. Standards for servicers in traditional NPE securitisations;
4. Rules covering synthetic excess spreads;
5. Clarification on the risk retention requirement for approved re-securitisations;
6. An exhaustive list of exceptional circumstances under which a change of risk retention holder is permitted.

Notable changes in the Final Text are:

1. A revision of the RTS requirement relating to the retention of the first loss tranche of an ABCP programme: the disclosure of ‘appropriate information’ to investors is now the disclosure of “all information necessary” to verify the retention.
2. Provision that an entity securitising own-issued debt instruments will satisfy retention requirements as long as the underlying assets consist solely of own-issued debt instruments (which may be useful in some real estate/master trust securitisation structures).
3. Inclusion of a comprehensive list of factors to consider when making a random selection of securitised exposures to retain a material net economic interest under Article 6(3)(c) of the EU Securitisation Regulation 2017 (“**EU SecReg**”).

Cadwalader, Wickersham & Taft LLP (Cadwalader) is a registered limited liability partnership established under the laws of the State of New York. The personal liability of our partners is limited to the extent provided in such laws. Additional information is available upon request or at www.cadwalader.com. A list of our partners, who are Solicitors or Registered Foreign Lawyers in England and Wales, is available for inspection at the above address. Regulated by the Solicitors Regulation Authority.

This memorandum has been prepared by Cadwalader for informational purposes only and does not constitute advertising or solicitation and should not be used or taken as legal advice. Those seeking legal advice should contact a member of the Firm or legal counsel licensed in their jurisdiction. Transmission of this information is not intended to create, and receipt does not constitute, an attorney-client relationship. Confidential information should not be sent to Cadwalader without first communicating directly with a member of the Firm about establishing an attorney-client relationship. ©2021 Cadwalader, Wickersham & Taft LLP. All rights reserved.

4. Clarificatory changes to the sole purpose test (prohibiting an entity which has been established or operates for the sole purpose of securitising exposures from holding the risk retention as an originator) that are consistent with existing market practices that look at the relevant experience of “members of the management body”.
5. Clarificatory changes to the rules on retention on a consolidated basis.

The Final Text is subject to review by the EU Council and Parliament, and once approved will come into force 20 days after publication in the Official Journal.

UK’s Treasury Publishes Near-Final Version of The Securitisation Regulations 2023

Originally published as an illustrative version of a statutory instrument as part of the Edinburgh Reforms (see [our note from December 2022](#) for a brief outline), HM Treasury has now published a ‘near-final’ [version of The Securitisation Regulations 2023](#) (“UK SecReg”) along with a [Policy Note](#).

As with EU measures to date, there is little of substance to distinguish this version of the UK SecReg from the existing Financial Services and Markets Act 2000 (Securitisation) Regulations 2018 and the UK SecReg’s Edinburgh predecessor, but those changes that are there do include an amended definition of ‘Institutional Investor’ to include only UK alternative investment fund managers. Rules relating to: (a) risk retention in NPE securitisations; (b) transfers of the retention; (c) the definitions of public and private securitisations; (d) disclosures for private securitisations; and (e) due diligence requirements for UK institutional investors investing in non-UK securitisations remain to be made by the UK’s Financial Conduct Authority and Prudential Regulatory Authority.

The final version of UK SecReg will be laid before Parliament following Royal Assent of the Financial Services and Markets Bill.

ESMA Updates Q&As

The European Securities and Markets Authority (“ESMA”) has updated its [Questions and Answers on the Securitisation Regulation](#). There are a number of modified responses (including on delegation of reporting, prepayments and shortfalls) and new questions, including on amending transaction documents, self-securitisation, balances, non-payments and underlying exposures.

* * *

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

Alix Prentice	+44 (0) 20 7170 8710	alix.prentice@cwt.com
Suzanne Bell	+44 (0) 20 7170 8549	suzanne.bell@cwt.com
Robert Cannon	+44 (0) 20 7170 8735	robert.cannon@cwt.com
Alexander Collins	+44 (0) 20 7170 8733	alex.collins@cwt.com

Stephen Day	+44 (0) 20 7170 8535	stephen.day@cwt.com
Matthew Duncan	+44 (0) 20 7170 8730	matthew.duncan@cwt.com
Sabah Nawaz	+44 (0) 20 7170 8583	sabah.nawaz@cwt.com
Claire Puddicombe	+44 (0) 20 7170 8533	claire.puddicombe@cwt.com
David Quirolo	+44 (0) 20 7170 8635	david.quirolo@cwt.com
Nick Shiren	+44 (0) 20 7170 8778	nick.shiren@cwt.com
Daniel Tobias	+44 (0) 20 7170 8630	daniel.tobias@cwt.com
Assia Damianova	+44 (0) 20 7170 8564	assia.damianova@cwt.com